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SPEECHES

OF

THE RIGHT HONOURABLE

JOHN PHILPOT CURRAN,

MASTER OF THE ROLLS IN IRELAND,

ON THE LATE VERY INTERESTING

STATE TRIALS.

FOURTH EDITION, WITH ADDITIONS.

LONDON:

PRINTED FOR LONGMAN, HURST, REES, ORME, AND BROWN,
PATERNOSTER ROW.

1815.

THE HISTORY OF

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PREFACE

TO

THE FIRST EDITION.

IT was formerly imagined that the study of the English law from its nature rendered its professors incapable of eloquence.

Hume seems to have been a convert to the opinion; and though in one of his essays he almost prophesies, that at a future day eloquent orators would arise in the British Senate; yet with respect to the bar he does not even insinuate a similar prediction. At that time the notion appeared sanctioned by experience, and eloquent barristers not having previously existed, the thing was deemed impossible. The period of an Erskine and a Curran* will be hereafter considered a new æra in the eloquence of the bar of these kingdoms. Before their time the publication of the state trials exhibits nothing of the orator in the pleadings of the lawyers; even the

* Dunning and Burgh preceded them and were for a short time their contemporaries; they were as inferior to these as Cotta and Hortensius to Cicero.

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cause of the seven bishops, on the event of which depended the liberties of England, could not excite energy in their advocates. Their speeches are excellent in legal reasoning: they have no pretension to eloquence. The alteration of the law, at the revolution, by permitting an address to a jury in cases of high treason, enlarged the field for the barrister. Notwithstanding which, in the numerous prosecutions of the adherents of the pretender, the counsel for the accused were insensible to the valuable privilege, and their languid defences would warrant the conclusion, that the magnitude of the crime with which the client was charged, extinguished the talents of his advocate, and deprived him of the benefit afforded by the legislature. The genius of Erskine, after nearly the lapse of a century, called forth that inestimable statute into the full vigour of operation. On the trial of lord George Gordon, he seized the opportunity, and with honour to himself and advantage to his country laid the foundation of that professional rank and character, which he has always so ably and independently maintained.

It is much to be regretted that Mr. Erskine's speeches as an advocate have not yet been published in a separate volume. They are only to be found in the printed reports of the trials in which he was engaged. And from the difficulty which the editor of the present volume experienced in collecting those of Mr. Curran, it is probable

probable in a few years to procure Mr. Erskine's may be impossible.* From a similar neglect, few memorials are now to be had of the professional eloquence of Dunning. And of the forensic exertions of Burgh, nothing remains except an imperfect note of the speech he delivered at the bar of the Irish house of lords in the Valentia cause.—To prevent the same fate attending those efforts of the talents of Mr. Curran, the memorials of which time has not yet destroyed, the editor gives this volume to the public. It appears under the disadvantage of being neither revised nor corrected by Mr. Curran himself. His professional avocations would have prevented him from yielding to such an application, had it been made; and had he even enjoyed leisure for the task, it is more than probable, the modesty of genius, which always under-values its own productions, would have dictated a refusal. The editor determined not to request, what he apprehended would not have been granted. This collection is therefore offered to the public, extracted from the printed ephemeral reports of the trials in which the speeches were delivered. Mr. Curran is responsible neither for this publication nor for its demerits. And the editor has studiously avoided the alteration of the most apparent inaccuracies, from the indelicacy that would attend encroaching on the privilege which should be left to every

* Since the second edition of this work appeared, Mr Erskine's speeches have been published.

public man, of correcting his own production, if at any time he should be disposed to exert it. His defences of Finney and Bond were considered by the bar as his ablest performances at the state trials of the year 1798. But unfortunately, the imperfect reports, which from accident or design were given to the public, are rather memorandums of facts, than specimens of the talents of the advocate. If better could have been procured, the public should have had them.

The anonymous editor of the volume of Edmund Burke's parliamentary speeches, which appeared long before the edition of his works, sanctioned by himself, did not labour under the same disadvantage. Each of them had been previously sent into the world, touched and re-touched by the orator himself into the highest state of polish and improvement. Perhaps the anxiety of finish is too apparent, and notwithstanding many fine strokes of the sublime, they are rather elegant political essays, than eloquent harangues. The orations of Cicero are come down to us in a state much superior to what they were then delivered, and it is clearly ascertained that the one against Verres, that for Milo, and the second Phillippic, are not those which were spoken at the time, but the compositions of subsequent retirement and study. And if our Irish advocate, in the period of his old age, in that interval between finishing the business of one world and entering upon the other, that period

period to which we all look forward as the season of the noblest enjoyment, should have leisure and inclination to follow the example of the Roman orator, this volume, by bringing to his recollection what might otherwise have been irrecoverably lost, may afford him the opportunity of leaving to posterity a memorial worthy of himself. If the smallest fragments of the eloquence of Crassus, who directed the education of Cicero, of Cotta and Hortensius, who were his contemporaries and rivals, could now be procured, at what expense would they be purchased, with what avidity would they be read by every lover of polite literature.

This volume, going down to future times even with all its manifold errors and imperfections, must be highly valuable. It will create a permanent interest in a name, which might only be known by tradition; and the eloquence of the Irish bar will be supported by better evidence than an "*Andivi Hiberniam olim floruisse eloquentiâ,*" as nothing similar will then exist to induce a belief of the fact.

Ireland has still to experience the advantage of the union. If any such now exists, it is "*a speck not yet visible, a small seminal principle rather than a formed body;*" but the extinction of an assembly, in which the liberty, the honour and happiness of the country were the subjects of debate, must be the eternal mildew of the ge-
nius

nus of the land. Such topics call forth every noble propensity of our nature, every generous affection of the heart, and stimulate every power of the mind. The splendid examples of parliamentary eloquence kindled the emulation of the bar. Flood preceded Burgh, Curran followed Grattan. England possessed a Pulteney, a Chatham, and a Fox, before she had a Dunning and an Erskine. They who fled for refuge against party squabbles, and civil dissensions, to the abolition of the parliament, were sadly mistaken. A spiritless tranquillity may be obtained; but the mind of man, to improve, must be agitated; and it is better occasionally to hear the dashing of the waves, than continually to exhale the pestilential effluvia of stagnant waters. The voices of the parliament were perishable, because man is not immortal. Had the institution remained, its virtues would have been permanent. For half a century before the union, we had been running a generous race of honourable friendly rivalry with England, in every thing great and good. We had acquired commerce and constitution. In the production of public character we were not inferior. If Britain boasted of Pulteney, Chatham, Townshend, Fox, Grey, Dunning and Erskine, Ireland could enumerate Boyle, Malone, Perry, Flood, Grattan, Daly, Ponsonby, Burgh, and Curran—These men will have no successors—when but boys, their minds were expanded, and their honourable ambition was inflamed, with the growing grandeur of their country;

country; and they came into the world fitted and prepared to discharge the duties imposed upon them by their station. Many of them are long since removed from the stage of life. Little did they imagine—that, from the tree which they had planted, withering almost ere it blossomed, no descendant of theirs should gather the fruit. —Little did they imagine—that Ireland was to rise only to fall—with but a moment of interval between her glory and her abasement. The physical and moral productions of man are governed by the same laws; the work of accomplishment is slow—the work of destruction is rapid. The skill of the architect and the labour of an age erect the majestic edifice; a succession of talents, of wisdom, of integrity, form a constitution: the pick-axe of an ignorant workman levels the one with the dust, and the vote of a venal senate eternally annihilates the other. The Roman senate existed till the complete subversion of the western empire; but the parliament of Ireland yielded to the English minister, what Rome, in the days of her greatest degeneracy, never surrendered to the vices or the virtues of her emperors.

The only apology for this digression, if in truth it can be called such, is that the writer is one, who when not more than a child, has shed the tear of the heart, while listening to the eloquence of a Flood and a Grattan, successfully contending for the rights of their native land. He was then

then of an age to understand such things, and cannot now forget that such things were:—he is one whose feelings time has not yet subdued—but who, wishing to prevent his children being miserable, will think it a parental duty to educate them in sentiments more congenial to the humbler fortunes of their country.—It is only by degrees the mind of man is reconciled to his situation—and it is to be hoped that these observations will be patiently endured, when even the flatterers of Augustus could without fear of offence style the death of Cato *nobile lethum* and call Brutus and Cassius *ultimi Romanorum*.

These are neither the sentiments of a bad Irishman nor a bad subject. The man who deplores the extinction of the Irish parliament, to be consistent with himself, must ardently wish success to England, in her present contest with France. The British empire in the existing state of things is the great bulwark of the liberties of Europe. And Ireland has still something well worth defending.

To enter upon a criticism of Mr. Curran's eloquence would exceed the limits of a preface. To assert that it is without defect would be absurd. The greatest orators of antiquity perceived and acknowledged their own deficiencies. The perusal of many of the following speeches, however inadequately reported, will enable the reader to
form

form a better judgment than any elaborate critique. The editor, who has often observed him in the different branches of professional exertion, cannot omit that in the cross-examination of a witness he is unequalled. The most intricate web that fraud, malice or corruption ever wove against the life, fortune or character of an individual, he can unravel. Let truth and falsehood be ever so ingeniously dove-tailed into each other, he separates them with facility. He surveys his ground like a skilful general, marks every avenue of approach; knows when to attack, when to yield; instantly seizes the first inconsistency of testimony, pursues his advantage with dexterity and caution 'till at last he completely involves perjury in the confusion of its contradictions. And while the bribed and suborned witness is writhing in the mental agony of detected falsehood, he wrings from him the truth, and snatches the devoted victim from the altar. It is when in a case of this kind he speaks to a jury that he appears as if designed by Providence to be the refuge of the unfortunate, and the protector of the oppressed. In the course of his eloquence, the classic treasures of profane antiquity are exhausted. He draws fresh supplies from the sacred fountain of living water. The records of holy writ afford him the sublimest allusions. It is then he stirs every principle that agitates the heart or sways the conscience, carries his auditory whither he pleases, ascends from man to the Deity, and again almost seems to call down to earth

earth fire from heaven; while they who listen, filled with a sense of inward greatness, feel the high nobility of their nature in beholding a being of the same species gifted with such transcendent qualities, and wrapt in wonder and delight, have a momentary belief,—that to admire the talents, is to participate in the genius of the orator.

Mr. Curran has from his first mixing with the world enjoyed the intimate acquaintance of many who hold the first rank in England and Ireland, for private integrity, public spirit, fine genius and literary acquirement, and is connected with some of them (not the least distinguished) in the bonds of the strictest friendship. In private life his manners are cheerful, sportive and good-natured, never over-valuing himself. The most limited talents in private intercourse were never forced by him into a feeling of inferiority, nor has he ever in the most unrestrained hours of social mirth pained the heart of any one who were present: so well is his wit tempered by the urbanity of his disposition. It is much superior to that species which must always have an object to ridicule, and, to amuse a company, render one of the party miserable. Nor is it of that second-rate mongrel kind, which always dwells in anecdote, to create an opportunity of quoting itself; it is of the purest, genuine nature, flowing spontaneously from the subject of conversation.

The descendants of Mr. Curran, to the remotest

motest period, may pride themselves on being sprung from a man, who, during seventeen years of public life, never voted in parliament contrary to the interest or liberty of his country; who, governing his political conduct by the maxims of an English whig and an Irish patriot, shewed himself a genuine friend to the British empire—from one, who never on any occasion was frowned by power or seduced by mean ambition into an abandonment of his client, but in every situation intrepidly performed the duty of an advocate*: from one who if he had been a man “*quoque facinore properans clarescere*” instead of disdaining to acquire honours by means which would have rendered him unworthy of wearing them, might early in life have attained the proudest professional situations.

The bar of Ireland will long hold in affectionate recollection, the man who always lived in an ingenuous and honourable intercourse with his competitors for fame, as Cicero did with Hortensius; who cherished with the kindest notice every appearance of excellence in the junior part of the profession; who never ostentatiously displayed his superiority; who, conscious of his great talents, bestowed praise wherever it was deserved; and was incapable of meanly detracting

* Mr. Erskine is entitled to similar praise, though he has never been placed in situations equally trying. The state of England in 1794, and that of Ireland in 1798, were very different.

from the merit of another to enhance his own. They will never forget him, who, on every occasion, proudly asserted the dignity and independence of the advocate, and never servilely surrendered even the least privilege of the profession. His name will live for ever hallowed in the grateful remembrance of his country, *unless the heart of man shall become so corrupt, and his mind so perverted, that public virtue will neither be felt nor understood.*

PREFACE

TO

THE SECOND EDITION.

THE demand of the public for Mr. Curran's speeches, notwithstanding that three thousand copies, (including the whole of the first edition) have been sold, induced the editor to publish a third edition. A few of Mr. Curran's parliamentary speeches are added to the collection contained in the first edition, which only consisted of those he delivered in the discharge of his professional duty. They are extracted from the Irish parliamentary debates; and indifferent as the notes of the speeches delivered in the courts of law may appear, these are still worse. The disappointment expressed by almost every purchaser, at not finding any of the parliamentary speeches in the first induced the editor to admit them into the present edition. They are given for the gratification of the public, although the editor is convinced, that they are in most instances inferior to the genius of Mr. Curran. In all of them, however, enough appears to enable the reader to form an idea, though probably an imperfect one, of Mr. Curran's eloquence in a popular assembly. It is to be regretted that the note of the speech on the catholic question, in the year 1793, is so defective, that it was impossible to venture to publish it, though it was one of the
best

best he ever delivered in the house of commons. It contained a description of the rise, progress and extinction of liberty in the nations of the world formerly most celebrated; given with all the glowing energy of a Burke, without any of his eccentricity. The editor, from despair of obtaining it, did not solicit the correction of the orator for the former edition:—The duties of the high station in which Mr. Curran, is now placed,* rendering the hope of success in such an application now less probable, it was not made on the present occasion. The editor, notwithstanding the imperfections of the work, is confident of its favourable reception with the public.—And he feels an honourable pride, that by this publication he may be the humble instrument of perpetuating to posterity the productions of a man, who will always be esteemed as one of the greatest ornaments of the age and the country in which he lived.

* Mr. Curran, during the administration of Mr. Fox and Lord Grenville was made master of the rolls in Ireland, and has at last experienced that an independent spirit, public integrity, accompanied by great talents are not insuperable obstacles to professional advancement.

Ireland has much cause to lament the dismissal of that administration: enlightened, liberal, and sagacious, the men who composed it understood the true interest of the British empire, and had entered upon the work of making Ireland a happy and united country, truly formidable to the enemy of Britain. They by whose means they have been supplanted have the merit of interrupting the labours of such men.

ADVERTISEMENT

TO THE

THIRD EDITION.

THE following passages are selected from the *Edinburgh Review*, of the month of October, 1808, in which is reviewed the second edition of this work, which the writer of the article calls most properly an unauthenticated volume. The editor is sensible that the same epithet is equally applicable to the present edition. It is, in fact, nothing more than a re-printing of the second edition; and the editor has persisted in abstaining from the correction of errors, which are evidently the mistakes of the reporters, from a wish of leaving unfringed to Mr. Curran the full power of revising his own productions, if, at any time, he should be disposed to exert it. And it is to be ardently wished that the advocate may yet, before his mortal course is finished, enable some future editor to give the world a memorial more worthy of his talents.

The wits of Queen Anne's time practised a sort of polite writing, characterised by purity, smoothness, and a kind of simple and temperate elegance. Their reasoning was correct luminous, and their raillery terse and refined; but they never so much as aimed at touching the greater passions, or rising to the loftier graces of composition. Their sublimity was little more than a gentle and graceful solemnity; their invective went no further than polished sarcasm, and their vehemence than pretty vivacity. Even the older writers who dealt in larger views and stronger language, the Hookers and Taylors, and Barrows and Miltons, although they possessed, beyond
all

all doubt, an original and commanding eloquence, had little of nature or rapid movement of passion about them. Their diction though powerful, is loaded and laborious; and their imagination, though rich and copious, is neither playful nor popular. Even the celebrated orators of England have been deficient in some of their characteristics. The rhetoric of Fox was his logic;—the eloquence of Pitt consisted mainly in his talent for sarcasm and for sounding amplification. Neither of them had much pathos,—and but little play of fancy.

Yet the style of which we are speaking is now familiar to the English public. But it was introduced by an Irishman; and may be clearly traced to the genius of Burke. There was no such composition known in England before his day. Bolingbroke, whom he is sometimes said to have copied, had none of it. He is infinitely more careless,—he is infinitely less impassioned. He has no such variety of imagery,—no such flights of poetry,—no such touches of tenderness,—no such visions of philosophy. The style has been defiled since, indeed, by base imitations and disgusting parodies; and, in its more imitable parts, has been naturalized and transfused into the recent literature of our country; but it was of Irish origin, and still attains to its highest honours only in its native soil. For this we appeal to the whole speaking and writing of that nation,—to the speeches of Mr. Grattan, and even to the volume before us. With less of deep thought than the corrected compositions of Burke, and less of point and polish than the magical effusions of Grattan, it still bears the impression of that inflamed fancy which characterizes the eloquence of both, and is distinctly assimilated to them by those traits of national resemblance.

The Review, then, among other passages of the work, selects the following from the report of the trial in the action brought by Hevey, against major Sirr.—It is deemed unnecessary to give any more extracts from the Review, as those sufficiently speak the opinion of the critic.

Mr.

Mr. Curran then proceeds to the immediate cause of the action in question.

“ On the 8th of September last, Mr. Hevey was sitting in a public coffee-house. Major Sirr was there. Mr. Hevey was informed that the major had at that moment said, that he (Hevey) ought to have been hanged. The plaintiff was fired at the charge; he fixed his eye on Sirr, and asked if he had dared to say so? Sirr declared that he had, and had said truly. Hevey answered, that he was a slanderous scoundrel. At the instant Sirr rushed upon him, and assisted by three or four of his satellites, who had attended him in disguise, secured him and sent him to the castle guard, desiring that a receipt might be given for the villain. He was sent thither. The officer of the guard chanced to be an Englishman, but lately arrived in Ireland; he said to the bailiffs, if this was in England, I should think this gentleman entitled to bail, but I don't know the laws of this country. However, I think you had better loosen those irons on his wrists, or I think they may kill him.

“ Here he was flung into a room of about thirteen feet by twelve; it was called the hospital of the provost; it was occupied by six beds, in which were to lie fourteen or fifteen miserable wretches, some of them sinking under contagious diseases. Here he passed the first night without bed or food. The next morning his humane keeper, the Major, appeared. The plaintiff demanded, “ why he was so imprisoned ? ” complained of hunger, and asked for the gaol allowance. Major Saudys replied, with a torrent of abuse, which he concluded by saying—“ Your crime is your insolence to major Sirr; however, he disdains to trample upon you; you may appease him by proper and contrite submission; but unless you do so, you shall rot where you are.—I tell you this, that if government will not protect us, by God, we will not protect them. You will probably (for I know your insolent and ungrateful hardness) attempt to get out by an habeas corpus; but in that you will find yourself mistaken, as such a rascal deserves.” Hevey was insolent enough to issue an habeas cor-

put, and a return was made upon it; that Hevey was in custody under a warrant from General Craig, on a charge of treason. *This return was a gross falsehood fabricated by Sirr,*" p. 350—352.

If it be the test of supreme genius to produce strong and permanent emotions, the passages which we have quoted must be in the very highest style of eloquence. There is not a subject of these kingdoms, we hope, that can read them, without feeling his blood boil, and his heart throb with indignation; and without feeling, that any government which could tolerate or connive at such proceedings, held out a bounty to rebellion, which it would almost dastardly to reject. The eloquence of these passages is the facts which they recite; and it is far more powerful than that which depends upon the mere fancy or art of the orator. There are passages however, of this more ornate description in the speech before us, which deserve to be quoted. The following is among the most striking. Mr. Curran is endeavouring to show, that the general publication of this transaction may be of use, as the means of letting England know the real condition and state of government in Ireland; and that the detail of a single authenticated fact is more likely to make an impression, than a more comprehensive but general picture. He then says,

"If, for instance, you wished to convey to the mind of an English matron the horrors of that direful period, when in defiance of the remonstrance of the ever to be lamented Abercrombie, our people were surrendered to the licentious brutality of the soldiery, by the authority of the state; you would vainly endeavour to give her a *general* picture of lust, and rapine, and murder, and conflagration. Instead of exhibiting the picture of an entire province, select a single object; and even in that single object do not release the imagination of your hearer from its task, by giving more than an outline; take a cottage; place the affrighted mother of her orphan daughters at the door, the paleness of death upon her face, and more than its agonies in her heart; her aching eye, her anxious ear, struggle through the mists of closing day, to catch

catch the approaches of desolation and dishonour. The ruffian gang arrives; the feast of plunder begins; the cup of madness kindles in its circulation. The wandering glances of the ravisher become concentrated upon the shrinking and devoted victim.—You need not dilate, you need not expatiate; the unpolluted mother, to whom you tell the story of horror, beseeches you not to proceed; she presses her child to her heart; she drowns it in her tears; her fancy catches more than an angel's tongue could describe; at a single view she takes in the whole miserable succession of force, of profanation, of despair, of death. So it is in the question before us. If any man shall hear of this day's transaction, he cannot be so foolish as to suppose that we have been confined to a single character, like those now brought before you.—p. 358, 359.

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S P E E C H
OF
JOHN PHILPOT CURRAN, Esq.
ON THE RIGHT OF ELECTION OF
LORD MAYOR OF THE CITY OF DUBLIN,
DELIVERED
BEFORE THE LORD LIEUTENANT,
AND
PRIVY COUNCIL OF IRELAND, 1790.

MY LORDS,

I HAVE the honour to appear before you as counsel for the commons of the corporation of the metropolis of Ireland, and also for Mr. alderman Howison, who hath petitioned for your approbation of him as a fit person to serve as lord mayor, in virtue of his election by the commons to that high office; and in that capacity I rise to address you on the most important subject that you have ever been called upon to discuss.—Highly interesting and momentous indeed, my lords, must every question be, that, even remotely and eventually may affect the well-being of societies, or the freedom, or the repose of nations: but that question, the result of which, by an immediate and direct necessity, must decide, either fatally or fortunately, the life or the death of that well-being, of that freedom, and that repose, is surely the most important subject on which human

wisdom can be employed, if any subject on this side the grave can be entitled to that appellation.

You cannot therefore, my lords, be surprised to see this place crowded by such numbers of our fellow citizens: heretofore they were attracted hither by a strong sense of the value of their rights, and of the injustice of the attack upon them; they felt all the magnitude of the contest; but they were not disturbed by any fear for the event; they relied securely on the justice of their cause, and the integrity of those who were to decide upon it. But the public mind is now filled with a fear of danger, the more painful and alarming, because hitherto unforeseen; the public are now taught to fear, that their cause may be of doubtful merits, and disastrous issue; that rights, which they considered as defined by the wisdom, and confirmed by the authority of written law, may, now, turn out to be no more than ideal claims, without either precision or security; that acts of parliament themselves are no more than embryos of legislation, or at best but infants, whose first labours must be, not to teach, but to learn; and which, even after thirty years of pupilage, may have thirty more to pass under that guardianship, which the wisdom of our policy has provided for the protection of minors.—Sorry am I, my lords, that I can offer no consolation to my clients on this head; and that I can only join them in bewailing, that the question, whose result must decide upon their freedom or servitude, is
perplexed

perplexed with difficulties, of which we never dreamed before, and which we are now unable to comprehend. Yet surely, my lords, that question must be difficult, upon which the wisdom of the representative of our dread sovereign, aided by the learning of his chancellor and his judges, assisted also by the talents of the most conspicuous of the nobles and the gentry of the nation, has been twice already employed, and employed in vain.—We know, my lords, that guilt and oppression may stand irresolute for a moment ere they strike, appalled by the prospect of danger, or pierced with the sentiment of remorse; but to you, my lords, it were presumption to impute injustice: we must therefore suppose that you have delayed your determination, not because it was dangerous, but because it was difficult to decide: and indeed, my lords, a firm belief of this difficulty, however undiscoverable by ordinary talents, is so necessary to the character which this august assembly ought to possess and to merit from the country, that I feel myself bound to atchieve it by an effort of my faith, if I should not be able to do so by any exertion of my understanding.

In a question therefore so confessedly obscure as to baffle so much sagacity, I am not at liberty to suppose, that certainty could be attained by a concise examination. Bending then, as I do, my lords, to your high authority, I feel this difficulty as a call upon me to examine it at large; and I feel it as an assurance, that I shall be heard with patience.

The lord mayor of this city hath from time immemorial been a magistrate, not appointed by the crown, but elected by his fellow-citizens. From the history of the early periods of this corporation, and a view of its charters and by-laws, it appears, that the commons had from the remotest times participated the important right of election to that high trust; and it was natural and just, that the whole body of citizens, by themselves, or their representatives, should have a share in electing those magistrates, who were to govern them: as it was their birth-right to be ruled only by laws, which they had a share in enacting.

The aldermen, however, soon became jealous of this participation, encroached by degrees upon the commons, and at length succeeded in engrossing to themselves the double privilege of eligibility and of election; of being the only body, out of which, and by which, the lord mayor could be chosen. Nor is it strange, that in those times a board, consisting of so small a number as twenty-four members, with the advantages of a more united interest, and a longer continuance in office, should have prevailed, even contrary to so evident principles of natural justice and constitutional right, against the unsteady resistance of competitors, so much less vigilant, so much more numerous, and therefore so much less united.—It is the common fate of the indolent to see their rights become a prey to the active.—The condition upon which God hath given liberty to
man

man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime, and the punishment of his guilt.

In this state of abasement the commons remained for a number of years; sometimes supinely acquiescing under their degradation; sometimes, what was worse, exasperating the fury, and alarming the caution of their oppressors, by ineffectual resistance:—The slave that struggles without breaking his chain, provokes the tyrant to double it; and gives him the plea of self-defence for extinguishing what, at first, he only intended to subdue.

In the year 1672, it was directed by one of the new rules, made by the lord lieutenant and privy council, under the authority of the act of explanation, that “No person should be capable of “serving in the office of lord mayor, until approved of by the lord lieutenant and council;” and this was a power given after the unhappy civil commotions in this country, to prevent any person, who was not a loyal subject, from holding so important a trust; and upon this single ground, namely *disloyalty*, have you, my lords, any authority to withhold your approbation.

From that time, till the year 1759, no farther alteration appears to have taken place in the mode of electing the chief magistrate. At this latter period the act of the 33 G. II. was passed:
the

the occasion and the object of that law are universally known. A city so increased in population, in opulence, and in consequence, could not tamely submit to have its corporate rights monopolized by a few, who were at once the tyrants of the metropolis, and the slaves of the government. Magistrates, elected by the board of aldermen, were in fact nominated by the court, and were held in derision and abhorrence by the people. The public peace was torn by unseemly dissensions; and the authority of the law itself was lost in the contempt of the magistrate. The legislature felt itself called upon to revive the constitution of the city, to restore and ascertain the rights of the commons, and thereby to redeem the metropolis from the fatal effects of oppression, of servitude, and of anarchy.—In saying this, my lords, I am founded on the preamble of the act itself.—“Whereas dissensions and disputes have, from a dissatisfaction as to some parts of the present constitution of the corporation of the city of Dublin, arisen, and for some years past subsisted among several citizens of the said city, to the weakening the authority of the magistrates thereof, who are hereby rendered the less able to preserve the public peace within the said city: Therefore, for remedying the aforesaid mischiefs and inconveniences, and for restoring harmony and mutual good will among the citizens of the said city, and for preserving peace and good order therein: At the humble petition of the lord
“mayor

“ mayor, sheriffs, commons and citizens of the
 “ city of Dublin, be it enacted,” &c.

Here are stated the mischief acknowledged, and the remedy proposed:—with this view, the statute has ascertained the constituent parts of the corporation, their respective members, their rights, and the mode of their election, with so minute and detailed an exactness, as even to enact many of those regulations which stood upon the authority of the new rules, or the ancient charters and by-laws, and in which no alteration whatsoever was intended to be made; and this it did, that the city might not be left to explore her rights by uncertain deduction from obscure or distant sources, but that she might see the whole plan in a single view, comprised within the limits of a single statute, and that so intelligibly to every common understanding, as to preclude all possibility of doubt, and thereby all further danger of cavil or dissension.

For this purpose it enacts, “ That the common council of the city of Dublin, consisting
 “ of the lord mayor and twenty-four aldermen,
 “ sitting apart by themselves as heretofore, and
 “ also of the sheriffs of the said city for the time
 “ being, and sheriffs’ peers not exceeding forty-
 “ eight, and of ninety-six freemen, who are to
 “ be elected into the said common council out
 “ of the several guilds or corporations of the
 “ said city in manner hereafter mentioned, be
 “ and

“and for ever hereafter shall be deemed and
 “taken to be the common council of the said
 “city and the representative body of the cor-
 “poration thereof.”

It then prescribes the mode of electing representatives of the several guilds and the time of their service, in which the right of the commons is exclusive and without control.

It then regulates the election of sheriffs: The commons nominate eight freemen, the mayor and aldermen elect two from that number.

Then of aldermen; The mayor and aldermen nominate four sheriffs' peers; the commons elect one of them.

And here, my lords, give me leave to observe, that this exclusive right of electing their own representatives, and this participation in the election of their magistrates is given to the popular part of the corporation to be exercised, as all right of suffrage is exercised by the constitution of this country; that is, according to the dictates of judgment or of affection, and without any authority vested in any human tribunal, of catechising as to the motives that may operate on the mind of a free elector in the preference of one candidate or the rejection of another.

I will now state to your lordships that part of the statute which relates to the subject of this day.

“And

“ And be it enacted by the authority aforesaid,
 “ That the name of every person who shall
 “ hereafter be elected by the lord mayor and
 “ aldermen of the said city, or the usual quorum
 “ of them, to serve in the office or place of
 “ lord mayor of the said city, shall be returned
 “ by them to the commons of the common
 “ council of the said city for their approbation;
 “ without which approbation such person shall
 “ not be capable of serving in the office or place
 “ of lord mayor; and if it shall happen, that
 “ the said commons shall reject or disapprove
 “ of the person so returned to them, the lord
 “ mayor and aldermen of the said city, or the
 “ usual quorum of them, shall from time to time
 “ elect another person to serve in the office or
 “ place of lord mayor of the said city and shall
 “ from time to time return the name of the
 “ person so by them elected to the commons of
 “ the common council of the said city for their
 “ approbation, and so from time to time until
 “ the said commons shall approve of the person
 “ returned by the lord mayor and aldermen of
 “ the said city, or the usual quorum of them;
 “ provided always, that such election into the
 “ said office of lord mayor shall be of some per-
 “ son from among the aldermen, and that the
 “ commons shall approve of some one person so
 “ elected and returned to them for their appro-
 bation.

“ And

“ And for the preventing the mischiefs and
 “ inconveniences which may arise from a failure
 “ of the corporation of the said city in the ap-
 “ pointment of necessary officers; be it enacted
 “ by the authority aforesaid, That if either the
 “ lord mayor and aldermen, or the commons of
 “ the said city, shall omit or refuse to assemble
 “ at or within the usual times for the electing
 “ the lord mayor, aldermen and sheriffs respec-
 “ tively; or being assembled shall omit or refuse
 “ to do what is hereby required to be done by
 “ them respectively, for the election and appoint-
 “ ment of the said officers; then, and as often as
 “ the case shall happen, it shall and may be law-
 “ ful for the commons in case such default shall
 “ be in the lord mayor and aldermen, or for the
 “ aldermen in case such default shall be in the
 “ commons, or for the usual quorum of them re-
 “ spectively, without any summons for that pur-
 “ pose, to assemble themselves at the tholsel of
 “ the said city on next following day, (not being
 “ Sunday:) or in case the same shall happen to be
 “ on Sunday, then on the Monday next follow-
 “ ing, and then and there to elect the said offi-
 “ cers respectively as the case shall require; and
 “ every such election, so made, shall and is
 “ hereby declared to be valid and effectual to all
 “ intents and purposes.

“ Provided always, and be it further enacted
 “ by the authority aforesaid, That every election
 “ by the said several guilds, for the constituting
 “ of

“ of their representatives in the common council of the said city, and every election made or approbation given by the commons of the said common council by virtue of this act shall be by ballot, and not otherwise.

“ Provided always, that notwithstanding any thing in this act contained, no person or persons shall be enabled or made capable to serve in or execute the office or place of lord mayor or sheriff, recorder or town clerk of the said corporation, until he or they shall respectively be approved of by the lord lieutenant or other chief governor or governors and privy council of this kingdom, in such manner as hath heretofore been usual.”

Under this act, at the Easter quarter assembly, held on the 16th day of April, 1790, the lord mayor and aldermen sent down the name of Mr. alderman James to the commons, who rejected him; the lord mayor and aldermen elected seven other persons, who were sent down to the commons and successively rejected; the lord mayor and aldermen then broke up their meeting without sending down the name of any other person, or conceiving that they had any right whatsoever to question the commons touching their reasons for rejecting those who had been so rejected.

The sheriffs and commons, thinking that the lord mayor and aldermen had omitted to do what was required of them by the statute to do, namely to proceed by sending down the name of another person, and so from time to time, &c. assembled and elected Mr. alderman Howison, whom they returned for the approbation of this board.—The lord mayor and aldermen returned Mr. James also as duly elected; the claims of both parties were heard by their counsel, and this board did not think proper to approve of either candidate; the city proceeded to a new election; the name of Mr. James was again sent down, and rejected as before; the message was then sent to demand of the commons the reason of their disapprobation; they declined giving any answer, but that it was their legal right to do as they had done: Mr. James was accordingly returned as duly elected by the lord mayor and aldermen; the sheriffs and commons, as before, elected and returned Mr. Howison; the claims of the candidates were again debated before this honourable board, but nothing was decided.

A third assembly has since been held, in which the lord mayor and aldermen have acted as before and returned Mr. James; the sheriffs and commons have elected Mr. Howison, who has petitioned for your approbation in virtue of that election.

I trust,

I trust, my lords, you will think it now time to decide the question;—my client calls for that decision; his opponents cannot wish for longer procrastination; in the progress of their pretensions hitherto they have found the fears, and odium, and reprobation of the public increasing upon them.

It is full time to compose the disquietude of that public:—the people do not always perceive the nature or the magnitude of a question at a single glance, but they now completely comprehend its merits and importance, they are now satisfied that every thing that can be of value to men may be lost or secured by the event of the present contest.

The claim of my clients has been impeached upon an alleged meaning of this act, and also upon certain facts stated by the learned counsel on the other side, and admitted as proved; of which facts, and the arguments upon them, I will take notice in their proper place.

As to the invective so liberally bestowed upon my fellow-citizens, it best becomes the unhired, voluntary advocate of their rights to pass them without remark.* I feel them of too high re-

* Mr. Curran here alludes to certain abusive passages contained in the speech of Dr. Duigenan, who appeared before the council as advocate for alderman James and the board of aldermen.

pect to be protected by panegyric or avenged by invective; I shall therefore treat those sallies of the learned gentleman's imagination as I would the flights of their doves, they come abroad only *animo revertendi*, and ought to be suffered to return unmolested to their owners.

The right of Mr. Howison is confessed by the counsel for his opponents to be warranted by the letter of the law. The mayor and aldermen sent down Mr. James; he was rejected by the commons, who sent to request that another might be sent down; the board did not send down another, but demanded a reason for the rejection of Mr. James, which by the letter of the act they were certainly not warranted in doing. But it is said that by the sound construction of that law, the commons have a right to reject only for good cause, and that having refused to assign such cause, they have been guilty of default which has transferred the sole right of election to the lord mayor and aldermen, who have accordingly elected Mr. James.

Lord Chancellor.—The question here is, “can
“ a mere right of rejection or approbation su-
“ persede a right of election.”

Mr. Curran.—If I can satisfy this board that that is not the question, I trust I shall be heard with patience as to what I conceive to be the question.

I say

I say, my lords, that is not the question; because,

1st. The mode and the rights of election in this case turn not upon my general doctrine of the common law, but upon an express statute, which statute would never have been made, had it not been intended by the legislature to prescribe rules of direction, different from those of the common law.

2dly, The rule alluded to relates to offices in corporations, as in the case cited, who have a naked authority to admit, but can reject only for a plain defect of right in the candidate, and who, if a mandamus is directed to him requiring him to admit, must return a legal cause of his disapprobation, that the truth of the fact, or the validity of the cause may be duly tried.

But there is clearly no analogy between such an officer and the great body of the commons of this city.

1st. That officer has no elective authority whatsoever;—it is admitted that the act gives to the commons at least a concurrent elective control, and, if the mayor and aldermen “make default,” an exclusive right to elect, which shall be “valid to all intents and purposes!”

2dly. That officer has a sort of judicial power, which is well placed in a single permanent individual, who is capable of, and responsible for
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the exercise of a judicial power;—but it would be monstrous to give a judicial power to a fluctuating multitude; for they cannot be presumed capable of exercising it, nor could they be responsible for such exercise by any course of law; for, suppose a mandamus directed to them requiring them to approve, how is it possible to make any true return to such writ? How can any man assign a cause for that rejection which the law requires to be by ballot, and consequently secret? Or, suppose a party of the commons are practised upon to return a cause, and that designedly an invalid one, how shall the residue of the commons be able to justify themselves by alleging the true and valid cause of their disapprobation?

To try it therefore by such a rule is to try it by a rule clearly having no general analogy to the subject, nor even a possible application, except so far only as it begs the question.

My lords, it is absurd to ask how a simple power of approbation or rejection for cause, shall be controlled, unless it is first determined whether the commons have that simple power only, or whether they have, what I think they clearly have under the statute, a peremptory right of approving or rejecting without any control whatsoever.

If they have but a simple right to reject for cause, and ought to have assigned such cause
under

under the law, they have been guilty of a default, and the sole right to elect devolves to the board of aldermen, who, of course, have duly elected. If they are not bound to assign such a reason, manifestly the aldermen have acted against law, and by their default have lost this power, and the commons have duly elected Mr. Howison.

Now, my lords, in examining this question, you must proceed by the ordinary rule of construction, applicable alike to every statute; that of expounding it by the usual acceptation and natural context of the words in which it is conceived.—Do the words then, my lords, or the natural context of this act, describe a limited power of rejecting only for cause to be assigned, or a peremptory power of rejecting without any such cause?—says the act, “If it shall happen “that the commons shall reject or disapprove:” The law describes this accidental rejection in language most clearly applicable to the acts of men assembled, not as judges, but as electors, not to judge by laws which they have never learned, but to indulge their affections, or their caprice; and therefore justly speaks of a rejection, not the result of judgment but of chance.

“If it shall happen that they shall *reject* or “*disapprove*:” my lords, you cannot say these words are synonymous; in acts every word must have its meaning if possible; “To *reject*,” contra-distinguished to “*disapprove*,” is to reject
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by an act of the will; to disapprove, supposes some act of the judgment also.

The act then clearly gives a right of rejecting, distinct from disapprobation, which by no possibility can be other than a peremptory right without limit or control.

But here, if a reason must be had, the law would naturally prescribe some mode of having it demanded:—this, however, unluckily cannot be done without a direct violation of the act, which enjoins, that the two bodies shall “sit apart, and by themselves as heretofore;” but at least it might have left the board of aldermen the means of making a silent struggle for the approbation of their favourite candidate, by sending him down again for reconsideration. But, on the contrary, the law is express, that “if the commons shall happen to reject or disapprove the first,” they must then proceed to send down the name, not of *him*, but of *another*, and so on.—How long, my lords? Until a good reason shall be assigned for the rejection of the first? No, my lords, it is “until the commons shall approve of *some one person*, so sent down;” and to this right of rejection, which the law has supposed might happen so often, the law has opposed the limit of a single proviso only, applicable enough to a peremptory right of rejection, but singular indeed, if applied to rejection for cause; “Provided always, that such election
“into

“ into the said office of lord mayor shall be of
 “ some person from among the aldermen, and
 “ that the commons shall approve of some one
 “ person so elected and returned to them for their
 “ approbation.”—A rejection without cause to
 be assigned, being a mere popular privilege, may
 be limited in its extent by reasons of expediency;
 but a judicial power of rejecting for legal cause
 cannot be so controlled without the grossest ab-
 surdity. It is like a peremptory challenge, which
 is given to a prisoner by the indulgence of the
 law, and may be therefore restricted within rea-
 sonable bounds. But a challenge for cause is
 given of common right, and must be allowed as
 often as it shall be found to exist, even though
 the criminal should remain for ever untried, and
 the crime for ever unpunished.

Permit me now, my lords, to try this con-
 struction contended for by another test. Let
 us put it into the form of a proviso, and see how
 it accords with the proviso, which you find ac-
 tually expressed: “ Provided always, that the
 “ commons shall be obliged to approve of the
 “ first person whose name shall be sent down to
 “ them, unless they shall assign good legal cause
 “ for their rejection.” The proviso expressed is,
 “ Provided that they shall approve,” not of the
 first person, “ but of some one person so elect-
 “ ed.” Can any thing be more obvious than
 the inconsistency of two such provisoes?

Give me leave, my lords, to compare this supposed proviso with the enacting part of the statute. It says, that if the first person sent down be rejected, the lord mayor and aldermen shall "then proceed to elect another and send down his name;" but if this supposed proviso were to make a part of the act, they would not be obliged to send down "another name," but would be authorized to insist upon the claim of the first candidate, by demanding a reason for his rejection. This supposed proviso therefore, and of course this superinduced construction, are directly incompatible both with the body and the proviso of the statute itself.

But see further, my lords, what you do by such a construction; you declare that the benefit of this statute, which is given expressly to the commons, is given upon a tacit condition, by the breach of which that benefit is utterly forfeited. Do you think, my lords, you shall act consistently with the spirit of the constitution, or of the law of Ireland, if you declare and enforce a cause of forfeiture written in no law whatsoever, and devised only by your own interpretation? or do you not feel, my lords, to what a wretched state of servitude the subject is reduced, if criminality and forfeiture are to depend, not on the plain and permanent meaning of the law, but upon the dreams and visions of capricious interpretators? If a constructive cause of forfeiture can be warranted, by which any part,
or

or any individual, of a corporation shall be adjudged to have lost their franchise; by the same principle may a constructive offence and forfeiture be devised, by which a whole corporation shall be stripped of its charter. Says the law, "If they shall omit or refuse to do what they are required to do by this act," they lose the benefit thereof: but this curious construction would declare, that the commons have forfeited the benefit of the statute, by refusing to do that which they are not required by this or any other act to do.

If then, my lords, you call this power of rejection or disapprobation, a power to be regulated by technical maxims of the common law, and to be exerted only for legal cause to be assigned; what is it but to give the law a meaning which the legislature never spoke? what is it but to nullify a statute made for the benefit of the people, by an arbitrary construction, supported only by the most pitiful of all argumentative fallacies, an assumption of what cannot be proved; or, to describe it in terms more suited to its demerit, that mixture of logical poverty, and ethical meanness, which stoops to beg what it has not industry to acquire, nor craftiness to steal, nor force to extort.

But see, my lords, whether this infallible rule of the common law, upon which the whole merits of this case have been rested, will not, if admitted,

admitted, be subversive of the authority which it would seem to support.

By one of the new rules, and by a clause in this act of parliament, no person can serve as mayor without the approbation of this board. This power of approving was notoriously given for the security of the government; and hath now for upwards of a century been exercised upon no other ground whatever. By a clause in this act, no person can serve as mayor without the approbation of the commons, and this right of approbation, as notoriously, was given to increase the power of the people; and the commons have accordingly so exercised it uniformly for thirty years; it is observable that this right of approbation is given to them in language more emphatical than it is to your lordships, but for argument's sake I will suppose the words the same: now if by the common law, all right of approving or rejecting can be founded only upon legal cause to be assigned, what becomes of your lordships' decision? You have already refused your approbation to the two present petitioners, having both exactly the same pretensions to your approbation which they have at present; you have refused your approbation, and you have assigned no cause: but let me ask a much more material question, what in that case becomes of your lordships' power? The same words in the same act of parliament cannot have two different constructions: If the commons are bound to assign a legal cause for rejection, you, my lords, must

must be similarly bound; and the law will then coerce the commons, and coerce your lordships, in a manner directly contrary to the intention of the act; it will then cease to be a law for the protection of liberty on the one hand, or the security of government on the other; for, being equally confined to a rejection for legal cause, the commons may be obliged to approve a candidate, not legally disqualified, though an enemy to their liberty, and your lordships be restrained from rejecting a candidate, not legally disqualified, though an enemy to the state. See then, my lords, to what you will be reduced: you must either admit, that the statute has confined you both equally to decide upon the mere question of legal capacity or incapacity only, of which they are clearly incapable of judging, and on which it is here admitted you are incompetent to decide, and has thus elevated them and degraded your lordships from good citizens and wise statesmen into bad judges; or if, in opposition to this construction, you do your duty to your sovereign, and refuse to admit to the magistracy a man whom you have a good reason to believe disaffected to the state, though subject to no legal incapacity; what do you do, my lords? You give two different expositions to the same words in the same act of parliament; that is, an enlarged exposition in favour of yourselves, and a confined one against the people; that is, in fact, you are driven to incur the odium of repealing the law as against the crown, and enforcing it against

against the subject*. See on the other hand, my lords, how by the plain and hitherto adopted construction, all these mischiefs are avoided. You judge of the candidate with respect to his loyalty, the commons with regard to his integrity and independence; neither of you with any relation to his legal capacity or incapacity; thus will every object of the law, of the people, and of the government be completely obtained: the commons will enjoy their power in deciding upon the popularity of the candidate for magistracy, you will do your duty in deciding upon his loyalty, and the courts of justice will retain their natural exclusive jurisdiction in every question that can touch his legal qualification; thus will it be impossible for any man to have the power of the city in his hands, who is not free from all legal objections, and who is not also deserving the confidence of his sovereign, as well as of his fellow-subjects.

Thus far, my lords, have I examined this law, with respect to the present question, by the general rule of construction, applicable generally to all statutes, that is, of seeking for the meaning of the legislature in the ordinary and natural context of the words they have

* This would really be the case, supposing the act of parliament had confined the right of the privy council to disapprove, and that of the common council to reject, to the legal cause of incapacity, and the privy council claimed for itself an unqualified power of disapproving, while it denied to the common council a similar power of rejecting.

thought

thought proper to adopt; and this, I thought, I might do with still more confidence in a law, professedly made for the direction of men unacquainted with legal difficulty, unversed in the subtilty of legal distinction, and acting in a situation which precludes them from the advantage of all legal assistance, but I am aware that what hath been satisfactory to my mind, hath not been so to some of your lordships. I feel myself, therefore, obliged to enter upon a more minute examination of this statute, upon principles and circumstances peculiar to itself.

I am sorry, my lords, to trespass upon your patience; but I am speaking upon a subject, in which if I do not succeed, the people of this country will have lost what is of infinitely more value than any time, however precious, that may be wasted in their defence.

This act, my lords, professes to be a remedial act, and as such must be construed according to the rules peculiar to remedial laws: that is, in three points of view; first, the former state of the law; secondly, the mischief of such former state; and thirdly, the remedy proposed for the cure of that mischief.

As to the first point: at the time of this statute the lord mayor and aldermen exercised the exclusive power of election to the chief magistracy, without any interference of the commons. The
immediate

immediate mischief of such a constitution, with respect to the metropolis itself, I have touched upon before ; the people were borne down ; the magistracy was depraved ; the law was relaxed, and the public tranquillity at an end. These mischiefs were more than enough to induce the citizens of Dublin to call loudly, as they did, upon the justice of the legislature for parliamentary redress. But the wisdom of that legislature formed an estimate of the mischief from considerations that probably did not enter into the minds of the contending parties ; namely, from the then state of Ireland as an individual, and as a connected country ; as an individual depressed in every thing essential to the support of political or civil independency ; depressed in commerce, in opulence, and in knowledge ; distracted by that civil and religious discord, suggested by ignorance and bigotry, and inflamed by the artifice of a cruel policy, which divided in order to destroy, conscious that liberty could be banished only by disunion, and that a generous nation could not be completely stripped of her rights, until one part of the people was deluded into the foolish and wicked idea that its freedom and consequence could be preserved or supported only by the slavery or depression of the other. In such a country it was peculiarly necessary to establish at least some few incorporated bodies, which might serve as great repositories of popular strength : our ancestors learned from Great Britain to understand their use and their importance ; in that country they had been
hoarded

hoarded up with the wisest forecast, and preserved with a religious reverence, as an unfailing resource against those times of storm, in which it is the will of Providence that all human affairs should sometimes fluctuate; and as such, they had been found at once a protection to the people and a security to the crown. My lords, it is by the salutary repulsion of popular privilege that the power of the monarchy is supported in its sphere; withdraw that support and it falls in ruin upon the people, but it falls in a ruin no less fatal to itself, by which it is shivered to pieces.

Our ancestors must therefore have been sensible that the enslaved state of the corporation of the metropolis was a mischief that extended its effects to the remotest borders of the island. In the confederated strength, and the united councils of great cities, the freedom of the country may find a safeguard which extends itself even to the remote inhabitant who never put his foot within their gates.

But, my lords, how must these considerations have been enforced by a view of Ireland, as a connected country, deprived as it was of almost all the advantages of an hereditary monarch: the father of his people residing at a distance, and the paternal beam reflected upon his children through such a variety of *mediums*, sometimes too languidly to warm them, sometimes so intensely as to consume; a succession of governors differing from one another in their tempers, in their talents, and in their virtues, and of course in their systems of administration;

tration; unprepared in general for rule by any previous institution, and utterly unacquainted with the people they were to govern, and with the men through whose agency they were to act. Sometimes, my lords, 'tis true, a rare individual has appeared among us, as if sent by the bounty of Providence in compassion to human miseries, marked by that dignified simplicity of manly character, which is the mingled result of an enlightened understanding, and an elevated integrity; commanding a respect that he laboured not to inspire; and attracting a confidence which it was impossible he could betray.* It is but eight years, my lords, since we have seen such a man amongst us, raising a degraded country from the condition of a province to the rank and consequence of a people, worthy to be the ally of a mighty empire, forming the league that bound her to Great Britain, on the firm and honourable basis of equal liberty and a common fate, "standing and falling with the British empire;" and thus stipulating for that freedom which alone contains the principle of her political life, in the covenant of her foederal connection. But how short is the continuance of those auspicious gleams of public sunshine! how soon are they passed, and perhaps for ever! In what rapid and fatal revolution has Ireland seen the talents and the virtues of such men give place to a succession of sordid parade, and empty pretension, of bloated promise, and lank perform-

* The duke of Portland, under whose administration Ireland obtained a free constitution.

ance, of austere hypocrisy and peculating economy!* Hence it is, my lords, that the administration of Ireland so often presents to the reader of her history, the view not of a legitimate government, but rather of an encampment in the country of a barbarous enemy; where the object of the invader is not dominion but conquest; where he is of course obliged to resort to the corrupting of clans, or of single individuals, pointed out to his notice by public abhorrence, and recommended to his confidence only by a treachery so rank and consummate, as precludes all possibility of their return to private virtue or to public reliance, and, therefore only, put into authority over a wretched country, condemned to the torture of all that petulant unfeeling asperity, with which a narrow and malignant mind will bristle in unmerited elevation; condemned to be betrayed, and disgraced, and exhausted by the little traitors that have been suffered to nestle and to grow within it, making it at once the source of their grandeur, and the victim of their vices, reducing it to the melancholy necessity of

* The duke of Rutland and the marquis of Buckingham quickly followed His Grace. The first was marked by a love of dissipation, and undignified extravagance. The Marquis, upon his arrival in Ireland, led the country to expect a general retrenchment in the public expenses. This expectation was terminated by the creation of fourteen new places for the purpose of parliamentary influence, countervailed indeed by a curtailment of the fuel allowed to the old soldiers of the royal hospital by the public bounty, and by abortive speculations upon the practicability of making one pair of boots serve for two troopers.

supporting their consequence, and of sinking under their crimes, like the lion perishing by the poison of a reptile that finds shelter in the mane of the noble animal, while it is stinging him to death.

By such considerations as these, my lords, might the makers of this statute have estimated the danger to which the liberty of Ireland was exposed; and of course the mischief of having that metropolis enslaved, by whose independency alone those dangers might be averted. But in this estimate they had much more than theory, or the observation of foreign events to shew them, that the rights of the sovereign and of the subject were equally embarked in a common fate with that independency. When in the latter part of the reign of queen Anne, an infernal conspiracy was formed, by the then chancellor (sir Constantine Phipps,) and the privy council, to defeat that happy succession which for three generations hath shed its auspicious influence upon these realms, they commenced their diabolical project with an attack upon the corporate rights of the citizens of Dublin, by an attempt to impose a disaffected lord mayor upon them contrary to the law. Fortunately, my lords, this wicked conspiracy was defeated by the virtue of the people; I will read to your lordships the resolutions of a committee of the house of commons on the subject.

“ First, resolved, that it is the opinion of
 “ this committee, that soon after the arrival of
 “ sir

“ sir Constantine Phipps, late lord chancellor,
 “ and one of the lords justices in this kingdom,
 “ in the year 1710, a design was formed and car-
 “ ried on to subvert the constitution and free-
 “ dom of elections of magistrates of corpora-
 “ tions within the new rules, in order to procure
 “ persons to be returned for members of parlia-
 “ ment, disaffected to the settlement of the
 “ crown, or his majesty and his royal issue.”

“ 2d. Resolved, that it is the opinion of this
 “ committee, that, in pursuance of that design,
 “ indirect and illegal methods were taken to sub-
 “ vert the ancient and legal course of electing
 “ magistrates in the city of Dublin.

“ 3d. Resolved, that it is the opinion of this
 “ committee, that the said sir Constantine Phipps,
 “ and those engaged in that evil design, in less
 “ than five months, in the year 1711, procured
 “ six aldermen duly elected lord mayors, and
 “ fourteen substantial citizens duly elected she-
 “ riffs, and well known to be zealously affect-
 “ ed to the protestant succession, and members
 “ of the established church, to be disapproved,
 “ on the pretence that alderman Robert Constan-
 “ tine, as senior alderman, who had not been
 “ mayor, had a right to be elected lord mayor.

4th. Resolved, that it is the opinion of this
 “ committee, that the senior alderman, who had
 “ not served as mayor, had not any right by
 “ charter

“ charter, usage, or by law, in force in the city of
 “ Dublin, as such, to be elected lord mayor.

“ 5th. Resolved, that it is the opinion of this
 “ committee, that the said sir Constantine
 “ Phipps, and his accomplices, being unable to
 “ support the pretended right of seniority, did,
 “ in the year 1713, set up a pretended custom
 “ or usage for the mayor in being, to nominate
 “ three persons to be in election for lord mayor,
 “ one of whom the aldermen were obliged to
 “ choose lord mayor.”

Lord Chancellor.—Can you think, Mr. Curran, that these resolutions of a committee of the house of commons can have any relation whatsoever to the present subject?

Mr. Curran.—I hope, my lords, you will think they have much relation indeed to the subject before you. The weakness of the city was the mischief which occasioned the act of parliament in question; to give the city strength, was the remedy. You must construe the law so as to suppress the former, and advance the latter. What topics then, my lords, can bear so directly upon the point of your enquiry, as the perils to be apprehended from that weakness, and the advantages to be derived from that strength? What argument then can be so apposite, as that which is founded on undeniable facts? Or what authority so cogent as the opinion of the representative

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tive wisdom of the nation, pronounced upon those facts, and transmitted to posterity upon record? On grounds like those, for I can conceive no other, do I suppose, the rights of the city were defended in the time to which I have alluded; for it appears by the records which I have read, that the city was then heard by her counsel; she was not denied the form of defence, though she was denied the benefit of the law. In this very chamber did the chancellor and judges sit, with all the gravity and affected attention to arguments in favour of that liberty and those rights which they had conspired to destroy. But to what end, my lords, offer argument to such men? A little and a peevish mind may be exasperated, but how shall it be corrected by refutation? How fruitless would it have been to represent to that wretched chancellor, that he was betraying those rights which he was sworn to maintain, that he was involving a government in disgrace; and a kingdom in panic and consternation; that he was violating every sacred duty, and every solemn engagement that bound him to himself, his country, his sovereign, and his God! —Alas, my lords, by what argument could any man hope to reclaim or dissuade a mean, illiberal, and unprincipled minion of authority, induced by his profligacy to undertake, and bound by his avarice and vanity to persevere? He would probably have replied to the most unanswerable arguments, by some curt, contumelious and unmeaning apophthegm, delivered with the fretful smile of irritated self-sufficiency and disconcerted

arrogance; or, even if he could be dragged by his fears to a consideration of the question, by what miracle could the pigmy capacity of a stunted pedant be enlarged to a reception of the subject? The endeavour to approach it would have only removed him to a greater distance than he was before: as a little hand that strives to grasp a mighty globe is thrown back by the re-action of its own effort to comprehend.—It may be given to a Hale, or a Hardwicke, to discover and retract a mistake; the errors of such men are only specks that arise for a moment upon the surface of a splendid luminary; consumed by its heat, or irradiated by its light, they soon purge and disappear; but the perverseness of a mean and narrow intellect, are like the excrescences that grow upon a body naturally cold and dark: no fire to waste them, and no ray to enlighten, they assimilate and coalesce with those qualities so congenial to their nature, and acquire an incorrigible permanency in the union with kindred frost and kindred opacity. Nor indeed, my lords, except where the interest of millions can be affected by the folly or the vice of an individual, need it be much regretted, that, to things not worthy of being made better, it hath not pleased Providence to afford the privilege of improvement.

Lord Chancellor.—Surely, Mr. Curran, a gentleman of your eminence in your profession must see that the conduct of former privy councils has nothing to do with the question before us. The question lies in the narrowest compass;
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it is merely whether the commons have a right of arbitrary and capricious rejection, or are obliged to assign a reasonable cause for their disapprobation. To that point you have a right to be heard; but I hope you do not mean to lecture the council.*

Mr. Curran.—I mean, my lords, to speak to the case of my clients, and to avail myself of every topic of defence which I conceive applicable to that case. I am not speaking to a dry point of law, to a single judge, and on a mere forensic subject; I am addressing a very large auditory, consisting of co-ordinate members, of whom the far greater number is not versed in law: were I to address such an audience on the interests and rights of a great city, and address them in the hackneyed style of a pleader, I should make a very idle display of profession, with very little information to those I address, or benefit to those on whose behalf I have the honour to be heard. I am aware, my lords, that truth is to be sought only by slow and painful progress; I know also that error is in its nature flippant and compendious, it hops with airy and fastidious levity over proofs and arguments, and perches upon assertion, which it calls conclusion.

* From the frequent interruptions experienced by Mr. Curran in this part of his speech, it would appear that lord Clare perceived that the description of sir Constantine Phipps was intended for himself. Those who best knew his lordship can judge of the justness of the representation.

Here the lord chancellor moved to have the chamber cleared; after some time the doors were opened.*

My lords, I was regretting the necessity which I am under of trespassing so much on that indulgent patience with which I feel I am so honoured; let me not however, my lords, be thought so vainly presumptuous as to suppose that condescension bestowed merely upon me; I feel how much more you owe it to your own dignity and justice, and to a full conviction that you could not be sure of deciding with justice, if you did not hear with temper.

As to my part, my lords, I am aware that no man can convince by arguments which he cannot clearly comprehend, and make clearly intelligible to others; I consider it therefore, not only an honour, but an advantage to be stopped when I am not understood. So much confidence have I in the justice of my cause, that I wish any noble lord in this assembly would go with me step by step through the argument; one good effect would inevitably result, I should either have the honour of convincing the noble lord, or the public would, by my refutation, be satisfied that they

* During the exclusion of strangers, it was understood that lord Clare moved the council, that Mr. Curran should be restrained by their lordships' authority from proceeding farther in that line of argument he was then pursuing; but his lordship being over-ruled, Mr. Curran proceeded,

are in the wrong: with this wish, and, if I may presume to say so, with this hope, I will proceed to a further examination of the subject.

It is a rule of law, that all remedial acts shall be so construed as to suppress the mischief, and advance the remedy; now a good cause of rejection can mean only a legal cause; that is, a cause working an incapacity in the person executing a corporate franchise; that is, of course, such a cause as would justify a judgment of ouster against him by a court of law, if actually in possession of such franchise; or warrant his amoval, by an act of the corporation itself. There are three sorts of offences for which a corporator may be amoved; first, such as have no immediate relation to his office, but are in themselves of so infamous a nature as to render the offender unfit to exercise any public franchise; secondly, such as are *only* against his oath, and the duty of his office as a corporator, and amount to a breach of the tacit condition annexed to his franchise or office; the third sort of offence for which an officer or corporator may be displaced is of a mixed nature, as being an offence, not only against the duty of his office, but also a matter indictable at common law.

For the first species of offences, a corporation can in no case amove without a previous indictment and conviction in a court of common law. For the other offences, it has a power of trial, as well as a motion.

To

To this let me add, that the office of alderman is as much a corporate office as that of lord mayor, and the legal cause that disqualifies the one must equally disqualify the other; but the person chosen to be mayor must be an alderman at the time of his election, and the law, of course, cannot suppose a man, actually in possession of a corporate franchise to labour under any corporate or legal incapacity: does it not then, my lords, follow irresistibly, that the law cannot intend to confine the power of rejection, which it expressly gives, to a legal incapacity, which without the grossest absurdity it cannot suppose to exist?

But let us assume, for argument's sake, however in defiance of common sense, that the legislature did suppose it possible, that such an incapacity might exist; what new privilege does a power of rejection for such cause give to the commons? And it is admitted by the learned counsel, "that this statute made a great enlargement, in deed, in their powers." Before the act was made, any corporator, subject to a personal disqualification, was removeable by the ordinary course of law; to give the commons, therefore, only a power of preventing a man, legally disqualified, from serving a corporate office, was giving them nothing which they had not before.

What sort of construction then, my lords, must that be which makes the legislature fall into the ridiculous absurdity of giving a most superfluous

fluous remedy for a most improbable mischief? And yet it is not in a nursery of children, nor a bedlam of madmen; but it is in an assembly, the most august that this country knows of, that I am obliged to combat this perversion of sense and of law. In truth, my lords, I feel the degradation of gravely opposing a wild chimera, that could not find a moment's admission into any instructed or instituted mind; but I feel also, that they who stoop to entertain it only from the necessity of exposing and subduing it, cannot at least be the first objects of that degradation.

Let me then, my lords, try this construction contended for, by another test. If the act must be construed so as to say that the commons can reject only for a legal cause to be assigned, it must be so construed, as to provide for all that is inseparably incident, and indispensably necessary to carrying that construction into effect: that is, it must provide a mode, in which four things may be done:

First, a mode in which such cause shall be assigned.

Secondly, a mode in which the truth of the fact of such cause shall be admitted or controverted.

Thirdly, a mode by which the truth of such fact, if controverted, shall be tried; and,

Fourthly

Fourthly, a mode by which the validity of such cause, when ascertained in fact, shall be judged of in law.

To suppose a construction requiring a reason to be assigned, without providing for these inevitable events, would be not the error of a lawyer, but would sink beneath the imbecility of an infant.

Then, my lords, as to the first point: how is the cause to be assigned? The law expressly precludes the parties from any means of conference by enacting, that they shall "sit apart and by themselves." The same law says, that "the rejection or disapprobation shall be by ballot only and not otherwise." Now when the law gives the commons a power of rejecting by ballot, it gives each individual a protection against the enmity which he would incur from the rejected candidate; but if you say that the rejection shall be null and void, unless fortified by the assignment of legal cause, see, my lords, what you labour to effect: under this supposed construction, you call upon the voters who reject by a secret vote, to relinquish that protection of secrecy, which the law expressly gives them; unless, my lords, the sagacity, that has broached this construction can find out some way, by which the voter can justify why he voted against a particular candidate, without disclosing also, that he did in fact vote against that candidate.

Let

Let me, however suppose that inconsistency reconciled, and follow the idea.

The name of alderman James is sent down, and the commons certify his rejection; an ambassador is then sent to demand of the commons the cause of this rejection;—they answer, ‘Sir we have rejected by ballot, and they who have voted against him are protected by the law from discovering how they voted’—to which the ambassador replies, ‘very true, gentlemen, but you mistake their worships’ question, they do not desire you to say who rejected Mr. James, for in that they well know they could not be warranted by law; they only desire to know why a majority has voted against Mr. alderman James.’—This, my lords, I must suppose to be a mode of argument not unbecoming the sagacity of aldermen, since I find it gives occasion to a serious question before so exalted an assembly as I have now the honour to address; I will, therefore, suppose it conclusive with the commons; a legal reason must be assigned for their rejection.—Pray, my lords, who is to assign that legal reason? Is it the minority who voted for the rejected candidate? I should suppose not; it must be then the majority who voted for the rejection.—Pray, my lords, who are they? By what means shall they be discovered?

But I will suppose that every member of the commons is willing to adopt the rejection, and
to

to assign a cause for it. One man, suppose a friend of the rejected candidate, alleges a cause of a rejection in which he did not in reality concur, and which cause he takes care shall be invalid and absurd; as for instance, the plumpness of the person of Mr. James;* if he did not vote for the rejection, he can have no right to assign a cause for it; the question then is, did he vote for the rejection? I beg leave, my lords to know how this is to be tried?

But suppose, to get rid of a difficulty, otherwise insurmountable, it shall be agreed in direct contradiction to common sense and justice, that every member of the commons shall be authorised to assign a legal cause of rejection; (and in truth if he may assign one he may assign more than one, if he is disposed to do so;) suppose then, my lords, that one hundred and forty-six causes are assigned, for such may be the number, though no one member assigns more than a single cause; if they may be all assigned, they must be all disposed of according to law; but which shall be first put into a course of trial? How shall the right of precedence be decided? But I will suppose that also settled, and a single cause is assigned; that cause must be a legal disability of some of the kinds which I have already mentioned; for there cannot be any other. The cause

* The person of the alderman is of the full regulation dimensions. He might well say of himself with relation to his brother justices, "*Quorum pars magna fui.*"

then

then assigned, in order to prevail, must be true in fact and valid in law, and amount to a legal incapacity. And here, let me observe, that a legal cause of incapacity, as it can be founded only on the commission of an infamous crime, or of some fact contrary to the duty and oath of a corporator, must, if allowed, imprint an indelible stigma on the reputation of the man so rejected. I ask, then, is the accusation of malignity, or credulity, or folly to be taken for true? Or shall the person have an opportunity of defending himself against the charge? The cause for which he can be rejected is the same with the cause for which he can be disfranchised; they are equally causes working an incapacity to hold a corporate franchise, their consequences are the same to the person accused; loss of franchise, and loss of reputation. The person accused therefore, if by the construction of a statute he is exposed to accusation, must by the same construction be entitled to every advantage in point of defence, to which a person so accused is intitled by the general law of the land. What, then, are those advantages to which a corporator is entitled, when charged with any fact as a foundation of incapacity or disfranchisement? He must have due and timely notice of the charge, that he may prepare for his defence; every corporator must have timely and express notice of the specific charge against him, that nothing may be done by surprise on either side. Now, my lords, you will condescend to observe, that the time sup-

posed by this statute for the whole business of election is a single day; is it then possible to give every member of the board of aldermen, for each of them may be a candidate, due notice of every charge of legal disability that may be possibly made against them? Or if it be not, as it manifestly is not, will you, my lords, create a construction which exposes any subject of the land to trial without notice, and to conviction and forfeiture without that opportunity of defence to which he is entitled of natural justice and common right?

But I will suppose that your lordships may adopt this construction, however it may supersede the right of the subject and the law of the land; I will suppose that the candidate may be accused at a moment's warning—Is bare accusation to hold the place of conviction? Shall the alderman, whose name is sent down, and who is rejected for an alleged personal disability, have an opportunity of defending himself against the charge of the commons? He cannot have the privilege of the meanest felon, of standing before his accuser, for, as an alderman, he must remain with his brethren, “separate and apart by themselves.” He cannot then plead for himself in person, nor by the law can he depute an attorney to defend in his name, for the commons are not authorised to admit any strangers amongst them. It is therefore utterly out of his power to deny the charge against him, however false in fact it may happen to be.

But

But I will suppose, if you please, that the charge is denied, and issue joined upon the fact; I beg leave to ask, if this supposed construction provides any mode of calling the jury, or summoning the witnesses, on whose testimony, and on whose verdict a citizen is to be tried upon a charge of corporate or legal culpability? But let me, my lords, with the profoundest respect, press this wicked and silly nonsense a little farther: suppose the charge admitted in fact, but the validity of it denied; who, my lords, is to judge of it by virtue of this construction? A point of law is to be decided between the lord mayor and aldermen who have chosen, and the commons who have rejected. What is the consequence? If the lord mayor and aldermen decide, they judge in their own cause; if the commons decide, they judge in their own cause, contrary to the maxim "*Nemo judex in propria causa;*" can you then, my lords, think yourselves warranted in adopting a construction, which supposes a legal charge to be made, in which the accused has not the advantage of notice, or the means of defence, or of legal trial, and on which if any judgment be pronounced, it must be pronounced by the parties in the cause, in direct opposition to the law of the land?

But, my lords, it seems all these defects in point of accusation, of defence, of trial and of judgment, as the ingenious gentlemen have argued, are cured by the magical virtue of those

beans, by whose agency the whole business must be conducted.

If the law had permitted a single word to be exchanged between the parties, the learned counsel confess that much difficulty might arise in the events which I have stated; but they have found out that all these difficulties are prevented or removed by the beans and the ballot. According to these gentlemen, we are to suppose one of those unshaven demagogues, whom the learned counsel have so humourously described, rising in the commons when the name of alderman James is sent down; he begins by throwing out a torrent of seditious invective against the servile profligacy and liquorish venality of the board of aldermen—this he does by beans:—having thus previously inflamed the passions of his fellows, and somewhat exhausted his own, his judgment collects the reins that floated on the neck of his imagination, and he becomes grave, compressed, sententious, and didactic; he lays down the law of personal disability, and corporate criminality, and corporate forfeiture, with great precision, with sound emphasis and good discretion, to the great delight and edification of the assembly—and this he does by beans.—He then proceeds, my lords, to state the specific charge against the unfortunate candidate for approbation, with all the artifice and malignity of accusation, scalding the culprit in tears of affected pity, bringing forward the blackness of imputed guilt through
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the varnish of stimulated commiseration; bewailing the horror of his crime, that he may leave it without excuse; and invoking the sympathy of his judges, that he may steel them against compassion—and this, my lords, the unshaved demagogue doth by beans.—The accused doth not appear in person, for he cannot leave his companions, nor by attorney, for his attorney could not be admitted—but he appears and defends by beans.—At first, humble and deprecatory, he conciliates the attention of his judges to his defence, by giving them to hope that it may be without effect; he does not alarm them by any indiscreet assertion that the charge is false, but he slides upon them arguments to shew it improbable; by degrees, however, he gains upon the assembly, and denies and refutes, and recriminates and retorts—all by beans,—until at last he challenges his accuser to a trial, which is accordingly had, in the course of which the depositions are taken, the facts tried, the legal doubts proposed and explained—by beans;—and in the same manner the law is settled with an exactness and authority that remains a record of jurisprudence, for the information of future ages; while at the same time the “harmony” of the metropolis is attuned by the marvellous temperament of jarring discord; and the “good will” of the citizens is secured by the indissoluble bond of mutual crimination, and reciprocal abhorrence.

By this happy mode of decision, one hundred
and

and forty-six causes of rejection (for of so many do the commons consist, each of whom must be entitled to allege a distinct cause) are tried in the course of a single day, with satisfaction to all parties.

With what surprise and delight must the heart of the fortunate inventor have glowed, when he discovered those wonderful instruments of wisdom and of eloquence, which, without being obliged to commit the precious extracts of science, or persuasion, to the faithless and fragile vehicles of words or phrases, can serve every process of composition or abstraction of ideas, and every exigency of discourse or argumentation, by the resistless strength and infinite variety of beans, white or black, or boiled, or raw; displaying all the magic of their powers in the mysterious exertion; of dumb investigation, and mute discussion; of speechless objection and tongue-tied refutation!

Nor should it be forgotten, my lords, that this noble discovery does no little honour to the sagacity of the present age, by explaining a doubt that has for so many centuries perplexed the labour of philosophic enquiry; and furnishing the true reason why the pupils of Pythagoras were prohibited the use of beans: it cannot, I think, my lords, be doubted that the great author of the metempsychosis found out that those mystic powers of persuasion, which vulgar naturalists

turalists supposed to remain lodged in minerals, or fossils, had really transmigrated into beans; and he could not, therefore, but see that it would have been fruitless to preclude his disciples from mere oral babbling, unless he had also debarred them from the indulgence of vegetable loquacity.

My lords, I have hitherto endeavoured to shew, and I hope not without success, that this act of parliament gives to the commons a peremptory right of rejection; that the other construction gives no remedy whatsoever for the mischief which occasioned its being passed; and cannot by any possible course of proceeding be carried into effect. I will take the liberty now of giving an answer to some objections relied upon by the counsel for Mr. James, and I will do it with a conciseness, not I trust disproportioned to their importance.

They say, that a peremptory rejection in the commons takes away all power whatsoever from the board of aldermen: to that I answer, that the fact and the principle is equally against them: the fact, because that board is the only body from which a lord mayor can be chosen; and has therefore, the very great power, that results from exclusive eligibility; the principle, because if the argument be, that the lord mayor and aldermen ought to have some power in such election, by a parity of reason, so ought the commons, who, if they can reject only for a

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legal incapacity, will be ousted of all authority whatsoever in such election, and be reduced to a state of disfranchisement by such a construction.

The gentlemen say, that your lordships can only enquire into the *primâ facie* title, and that the claim of Mr. James is, *primâ facie*, the better claim.

I admit, my lords, that you are not competent to pronounce any judgment that can bind the right. But give me leave to observe, first, that the question, upon which you yourselves have put this enquiry, is a question applicable only to the very right, and by no possibility applicable to a *primâ facie* title.

One of your lordships has declared the question to be, “Whether by the common law, a “mere power of approbation or rejection can “supersede a power of election?” If that question is warranted in assuming the fact, give me leave to say, that the answer to it goes directly to the right, and to nothing else; for if the commons are bound by law to assign a cause of rejection, and have not done so, Mr. James had clearly the legal right of election, and Mr. Howison has no right or title whatsoever.

But I say further: The mode of your enquiry makes it ridiculous to argue, that you have not entered into any disquisition of the right:
Why,

Why, my lords, examine witnesses on both sides?
 Why examine the books of the corporation?
 Why examine into every fact relating to the
 election?

I cannot suppose, my lords, that you enquired into facts, upon which you thought yourselves incompetent to form any decision: I cannot suppose you to admit an extra judicial enquiry, by which the members of a corporation may be drawn into admission, that may expose them to the future danger of prosecution or disfranchisement.

I hope, my lords, I shall not be deemed so presumptuous, as to take upon me to say, why you have gone into these examinations; it is not my province to justify your lordships' proceedings: it stands upon your own authority; I am only answering an argument, and I answer it by shewing it inconsistent with that proceeding.

Let me, my lords, pursue the idea a little further. Are you only enquiring into a *primâ facie* title? What is a *primâ facie* title? I conceive it to be a title, not which may possibly be found a good one upon future examination; but, which is good and valid, and must prevail, unless it be opposed and defeated by another, which may possibly be adduced, but which does not then appear. So in an ejectment at law, for instance,

a plaintiff must make a title, or he is non-suited. If he makes out a legal title *in omnibus*, the court declares it a *prima facie* title, that is, a title conclusive as to the right, unless a better shall be shewn; and accordingly calls on the defendant to shew such better title if he can: the moment the defendant produces his title, the question of *prima facie* title is completely at an end; and the court has no longer any question to decide upon, but the very merits; and this for a plain reason: The question, whether *prima facie* a good title or not, is decided upon the single ground that no other title then appears with which the title shewn can be compared; in short, my lords, whether *prima facie* good, is a question confined only to the case of a single title, and cannot be applied, without the grossest absurdity, to a case where you have both the titles actually before you. It may be the question in case of a single return; in case of a double return, as here, it cannot by any possibility be the question.

But, my lords, let me carry this a little farther yet. You have both the titles before you.— You have yourselves declared, that the question turns upon the construction of this act of parliament, which enacts also, “ That it shall be “ deemed a public act, in all courts, and in all “ places.”

Now it is contended, the construction of the act is *prima facie*, in favour of Mr. James.

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May I presume to ask, what does the *primá facie* construction of a statute import? It must import, if it import any thing, that meaning which, for aught then appearing, is true, but may possibly, because of something not then appearing, turn out not to be so. Now, nothing can possibly be opposed to that *primá facie* construction, save the act itself. A *primá facie* construction of a statute, therefore, can be nothing but the opinion that rises in the mind of a man, upon a single reading of it, who does not choose to be at the trouble of reading it again. In truth, my lords, I should not have thought it necessary to descend to this kind of argumentation, if it had not become requisite for me to do so, by an observation coming from one of your lordships.* “That the letter of the act would “bear out the commons in their claim, but that “the sound construction might be a very different thing.” I will, therefore, add but another word upon this subject:—If a *primá facie* construction be sufficient to decide, and if the commons have the letter of the law in their favour, I would ask with the profoundest humility, whether your lordships will give the sanction of your high authority to a notion, that, in statutes made to secure the liberties of the people, the express words in which they are written shall not be at least a *primá facie* evidence of their signification?

* Lord Clare.

My lords, the learned counsel have been pleased to make a charge against the citizens of Dublin, "for their tests and their cavalcadings" on a late occasion; and they have examined witnesses in support of their accusation. It is true, my lords, the citizens did engage to the public and to one another, that they would not vote for any candidate for corporate office or popular representation, who had any place in the police establishment. But I would be glad to know by what law it is criminal in freemen to pledge themselves to that conduct which they think indispensably necessary to the freedom of their country. The city of Dublin is bound to submit to whatever mode of defence shall be devised for her by law, while such law shall continue unrepealed; but I would be glad to learn, by what law they are bound not to abhor the police institution, expensive, and ineffectual, inadequate to their protection, and dangerous to their liberty; and that they do think it so cannot be doubted. Session after session has the floor of the senate been covered with their petitions, praying to be relieved against it, as an oppressive, a corrupt, and therefore an execrable establishment.

True it is also, my lords, they have been guilty of those triumphant processions, which the learned counsel have so heavily condemned. The virtue of the people stood forward to oppose an attempt to seize upon their representation,

tion, by the exercise of a dangerous and unconstitutional influence, and it succeeded in the conflict; it routed and put to flight that corruption, which sat, like an incubus, on the heart of the metropolis, chaining the current of its blood, and locking up every healthful function and energy of life. The learned counsel might have seen the city pouring out her inhabitants, as if to share the general joy of escaping from some great calamity, in mutual gratulation and public triumph.*—But why does the learned counsel insist upon this subject before your lordships? Does he think such meetings illegal? He knows his profession too well, not to know the reverse.—But does he think it competent to the lord lieutenant and council of Ireland to take cognizance of such facts, or to pronounce any opinion whatever concerning the privileges of the people? He must know it is not.—Does he then mean that such things may be subjects of your resentment, though not of your jurisdiction? It would have been worth while, before that point had been pressed, to consider between what parties it must suppose the present contest to subsist. To call upon the government of the country to let their vengeance fall upon the people for their resistance of unconstitutional influence is surely

* The cavalcades here spoken of took place on the election of Mr. Grattan and lord H. Fitzgerald, who had been returned for the city of Dublin in opposition to the court candidates, one of whom was alderman Warren, then at the head of the police establishment.

an appeal not very consistent with the virtuous impartiality of this august assembly. It is only for those who feel defeat, to cherish resentment, or to think of vengeance.

But suppose for a moment, (and there never ought to be reason to suppose it) that the opposition of the city had been directly to the views or the wishes of the government; why are you, therefore, called upon to seize its corporate rights into your hands, or to force an illegal magistrate upon it? Is it insinuated that it can be just to punish a want of complaisance, by an act of lawless outrage and arbitrary power? Does the British constitution, my lords, know of such offences, or does it warrant this species of tyrannical reprisal? And, my lords, if the injustice of it is without defence, what argument can be offered in support of its prudence or policy? It was once the calamity of England to have such an experiment made by the last of the Stuarts, and the last of that unhappy race because of such experiments. The several corporations of that country were stript of their charters: and what was the consequence? I need not state them; they are notorious; yet, my lords, there was a time when that sovereign was willing to relinquish what he had so weakly and wickedly undertaken; but there is a time when concession comes too late to restore either public quiet, or public confidence, and when it amounts to nothing more than an acknowledgment

ment of injustice ; when the people must see, that it is only the screen behind which oppression changes her attack from force to fraud, from the battery to the mine. See then, my lords, how such a measure comes recommended ; its principle injustice, its motive vengeance, its adoption sanctioned by the authority of a tyrant, or the example of a revolution.

My lords, the learned counsel has made another observation which I cannot pass without remark ; it is the last with which I shall trouble you. He says, the commons may apply to the law, and bring an information in *quo warranto* against Mr. James, though you should give him your approbation ; that is, my lords, your judgment does not bind the right, it only decides the possession of the office. 'To this I answer, that in this case, to decide on the possession is in fact to decide the contest ; and I found that answer on the high authority of the noble lord, who was pleased to say, that "when the city had spent three years in the king's bench, she would probably grow sick of the contest."* I was not surprised, my lords, to hear an expression of that regret which must arise in every worthy mind, and which I am sure the noble lord sincerely felt, at the distress of a people, reduced to defend those rights which ought never to have been attacked, and to defend them in a way by which they could not possibly suc-

* The lord chancellor.

ceed. The truth is, as the noble lord has stated, the time of Mr. James's mayoralty would expire in a year, and the question of law could not be terminated in three; the present contest, therefore, cannot be decided by law. How then, my lords, is it to be decided? Are the people to submit tamely to oppression, or are they to struggle for their liberties? I trust, my lords, you will think they have not done any thing so culpable as can justify the driving them to so calamitous a necessity; for fatal must that struggle be, in whatsoever country it shall happen, in which the liberties of a people can find no safety but in the efforts of vindictive virtue; fatal to all parties, whatsoever may be the event. But, my lords, I feel this to be a topic on which it is neither my province nor my wish to expiate, and I leave it the more willingly, because I know that I have already trespassed very long upon your patience, and also, because I cannot relinquish an hope, that the decision of your lordships this day will be such as shall restore the tranquillity of the public mind, the mutual confidence between the government and the people, and make it unnecessary for any man to pursue so painful a subject.

The lord lieutenant and privy council confirmed the election of the commons, in the person of alderman Howison for lord mayor.

SPEECH

S P E E C H
OF
JOHN PHILPOT CURRAN, Esq.
ON MOVING THAT IT IS
THE EXCLUSIVE PRIVILEGE
OF
THE HOUSE OF COMMONS
TO ORIGINATE
MONEY BILLS.

TUESDAY, DECEMBER 16, 1783.

MR. CURRAN.—While I reflect that the motion I am now going to make is of the utmost importance to the honour, and even existence of this house, and that I have given full notice of my intention, I am much surprized at the little regard that seems intended to be paid to it, as is manifest from the emptiness of those benches—This, sir, is not a question of party; I never did, nor ever will attach myself to party; and though I mean to move the resolution from this side of the house, yet it concerns both sides equally; it goes to assert the privileges of the people of
Ireland

Ireland represented in this house of commons, and I say every party, and every description of men in this house are equally concerned in supporting it. I say it is the sole and exclusive right of the commons of Ireland to originate and frame money bills in such manner as they shall think proper, and the resolution I intend to propose is only to vindicate this privilege from the encroachments of a neighbouring assembly, which has lately, by certain resolutions, invaded this right, this palladium of the constitution, which I trust every man in the house will think himself bound to defend.

I am sorry to say that the constitution of Ireland is so young, that I need not go back to a very remote period, to prove that the exclusive right of originating and framing money bills has always resided in this house ; but for thirty years back it certainly has, and in England, from whence we derive our constitution, it always has been the practice. The peers and the crown possess an undoubted right of rejecting such bills *in toto*, but, in the commons alone resides the power of originating or framing them ; the very mode of giving the royal assent to such bills demonstrates that the commons alone are the source from which they flow. His majesty thanks his faithful commons, accepts their benevolence, and wills it to be so ; and this mode obtains both in Britain and here. To whom should the people of Ireland look for the redress of grievances,

for

for the encouragement of arts, for the promotion of commerce, but to their representatives in this house? What powerful engine has this house, by which it can obtain the redress of grievances, the encouragement of arts, or the promotion of commerce, but by including those objects in the bill of supply? And if the right be once given up, or wrested from the commons, they cease to be the patrons and representatives of the people; another assembly will assume that power; the people will learn to look for that encouragement and support from the aristocratic, which they now receive from the democratic branch of the state; this house will become a very cypher, and its members, instead of possessing the power of encouraging arts, rewarding merit, or, in a word, of serving the country, will become the humble solicitors of another assembly.

From the reign of Henry the Third the power of annexing the redress of grievances to money bills has been the constitutional privilege of the commons of England; the practice of inserting such clauses as the commons have deemed proper has obtained in Ireland for more than thirty years, and, to any person acquainted with our constitution, must, at the slightest view, appear to be their inherent right: I cannot therefore suppose this house will be silent when this privilege is invaded by another assembly. No man entertains a higher opinion of that assembly
than

than I do, and am persuaded, that so great is their lordships' wisdom, that when this matter is duly considered by them, they will see the impropriety of two resolutions which appear upon their journals of the fourth and fifth of the present month, to this effect, "That all grants made
 " to private manufacturers ought to be made in
 " separate acts, and that enacting clauses in bills
 " of supply, the matter of which is foreign to the
 " bill, is unparliamentary, and tends to destroy
 " the constitution of this kingdom." That the illustrious assembly to which I allude have passed such a resolution is notorious, and cannot be denied, it is inserted in their journals, and has been seen by many members of this house; the formality therefore of appointing a committee to inspect their lordships' journals is unnecessary, and all that remains for the commons is to vindicate their own privileges by a mild and temperate resolution which I shall propose to the house; for even admitting that sometimes a house of commons has erred in making improper grants, we should rather reform ourselves, and determine not to err again, than submit to have a monitor over us.

If I were addressing a house of commons the most virtuous, or the most corrupt, I should expect to be supported in this measure; for I would say to a virtuous house of commons, the privilege of originating and framing money bills is the palladium of your liberty, the great engine
 to

to restrain oppression, to redress grievances, or to encourage merit. I would say to a corrupt house of commons, it is the palladium of your corruption, the security of the wages of your venality, the means by which you may obtain the reward of your prostitution; or if I were addressing a house containing both descriptions, both kinds of argument would be applicable. But to the house before which I stand, surely the arguments which I have first used, the arguments of virtue and honour will be sufficient; to them therefore I shall trust.

I lament that a learned and right honourable member, with whom I once had the happiness of living on terms of friendship, is now absent; because I think I might rely upon his supporting the resolution I intend to propose; that support would perhaps renew the intercourse of our friendship, which has lately been interrupted. And I must beg the indulgence of the house to say, that that friendship was on the footing of perfect equality, not imposed by obligation on the one side, or bound by gratitude on the other; for I thank God, when that friendship commenced, I was above receiving obligation from any man, and therefore our friendship, as it was more pure and disinterested, as it depended on a sympathy of minds and a congeniality of sentiments, I trusted would have endured the longer. I think myself bound to make this public declaration, as it has gone
forth

forth from this house, that I am a man of ingratitude, and to declare, that for any difference of opinion with my learned and right honourable friend I cannot be taxed with ingratitude; for that I never received any obligation from him, but lived on a footing of perfect equality, save only so far as his great talents and erudition outwent mine.

I confess my obligation to the house for this indulgence of speaking a few words foreign to the debate, but which every man must think I owed to my own character; and that I may detain gentlemen no longer, I shall briefly move:

“ That it is the sole and undoubted privilege
 “ of the commons of Ireland to originate all
 “ bills of supply and grants of public money, in
 “ such manner and with such clauses as they
 shall think proper.”

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

ON

ATTACHMENTS.

THURSDAY, FEBRUARY 24, 1785.

MR. CURRAN said he hoped he might say a few words on this great subject, without disturbing the sleep of any right honourable member, (the attorney general having fallen a-sleep on his seat) and yet, perhaps, added he, I ought rather to envy, than blame the tranquillity of the right honourable gentleman. I do not feel myself so happily tempered, as to be lulled to repose by the storms that shake the land. If they invite rest to any, that rest ought not to be lavished on the guilty spirit. He said, he never more strongly felt the necessity of a perfect union with Britain, of standing or falling with her in fortune and constitution, than on this occasion. She was the parent, the archetype of Irish liberty, which she had preserved inviolate in its grand points, while among us it has been violated and debased. He then called upon the house to consider the trust reposed in them, as the great inquest of the people. He respected

judges

judges highly; they ought to be respected, and feel their dignity and freedom from reprehension, while they did what judges ought to do; but their station should not screen them, when they passed the limit of their duty.

Whether they did, or not, was the question? The house was the judge of those judges; and it would betray the people to tyranny, and abdicate their representation, if they did not act with probity and firmness.

In their proceedings against Reilly he thought they had transgressed the law, and made a precedent which, while it remained, was subversive of the trial by jury, and of course, of liberty. He regarded the constitution, he regarded the judges, three of that court at least, and for their sakes he would endeavour to undo what they had done.

The question was, whether that court had really punished their own officer for a real contempt; or whether it had abused that power for the illegal end of punishing a supposed offence against the state, by a summary proceeding, without a trial by jury?

He said the question was plain, whether as a point of constitution, or as of law; as the former, it is plain and obvious; but he would first consider it in the former view. When he felt the
the

the constitution rocking over his head, his first anxiety was to explore the foundation, to see if the great arches that supported the fabrick had fallen in; but he found them firm, on the solid and massy principle of common law. He then observed, that the principle of legal liberty was, that offence, and trial, and punishment should be fixed; it was sense; it was *Magna Charta*; a trial by jury as to fact—an appeal from judges as to law.

He admitted attachment an exception to the general rule, as founded in necessity, for the support of courts, in administering justice, by a summary control over their officers acting under them.

But the necessity that gave rise to it was also the limit. If it was entered farther, it would extend to all criminal cases not capital, and in the room of a jury, crimes would be created by a judge,—the party accused by him, found guilty by him, punished by the utter loss of his liberty and property for life, by indefinite fine and imprisonment, without remedy or appeal. If he did not answer, he was guilty; even if he did, the court might think or say it thought the answer evasive, and so convict him for imputed prevarication.

The power of attachment, he said, was wisely confined by the British laws, and practised with-

in that limit. The crown lawyers had not produced a single case, where the King's-bench in England had gone beyond it. They had ranged through the annals of history; through every reign of folly, and of blood; through the proud domination of the Tudors, and the blockhead despotism of the Stuarts, without finding a single case to support their doctrine. He considered the office of sheriff as judicial and ministerial. He said Reilly's offence did not fall within any summary control, in either capacity. It was not a judicial act; it was not *colore officii*. An act *colore officii* must either be an act done by the actual exercise of an abused or an usurped authority, neither of which could it be called; for where the sheriff summonses his county, he does it by command, by authority, under pain of fine and imprisonment to those who disobey.

Was the appointment of a meeting any such active exertion of authority? Did any man suppose he was obliged to attend? That he would be fined, if he refused to attend? No. Did the sheriff hold out any such colourable authority? Clearly not. The contrary:—He explained the purpose of the intended meeting: he stated at whose instance he appointed such meeting, and thereby shewed to every man in his senses, that he was not affecting to convene them by colour of any compulsive authority.

If then there was any guilt in the sheriff's conduct

conduct, it was not punishable by attachment. They who argued from its enormity, were guilty of a shabby attempt to mislead men from the question, which was not, whether he ought to be punished at all; but whether he had been punished according to law?

You have heard no man adduce a single case to support their assertion; but we have the uniform practice of the King's-bench in England in our favour: the uniform practice, both there and here, during these last years. Had they not meetings there and here? Was not the crown receiving petitions and addresses from such assemblies?—Why, during that time, no motion for an attachment in either kingdom?

If an English attorney-general had attempted such a daring outrage on public liberty and law he must have found some friend to warn him not to debase the court, and make it appear to all mankind as the odious engine of arbitrary power; not to put it into so unnatural a situation, as that of standing between the people and the crown, or between the people and their representatives.

He would warn him not to bring public hatred on the government, by the adoption of illegal prosecution; that if he shewed himself afraid of proceeding against offenders by the ordinary mode, then offenders would be exalted by arbitrary persecution of them; they would become suffering patriots,

patriots, from being mere petty offenders ; their cries would become popular. He would be warned how he led the court into an illegality, which the commons could never endure: that no honest representative could sacrifice his fame and his duty, by voting in support of a proceeding subversive of liberty; that he would shrink from the reproach of the most insignificant of his constituents, if that constituent could say to him, ' when thou sawest the thief of the constitution, ' thou consentedst unto him.'

Such would be the motion suggested to an English attorney-general, and accordingly we find no instance of his ever venturing on such a measure.

Without case then or precedent, or principle, what is the support of such a conduct here? The distinction of a judge? And what is that distinction? it is different in different men; it is different in the same man at different times—it is the folly of a fool, and the fear of a coward—it is the infamy of the young, and the dotage of age; in the best man it is very weakness that human nature is subject to, and in the worst it is very vice. Will you then tell the people that you have chosen this glorious distinction in the place of fixed laws, offences and fixed punishment, and in the place of that great barrier between the prerogative and the people—a trial by jury.

But

But it is objected that the resolution is a censure on the judges, and a charge of corruption:— I deny it, and I appeal to your own acts.

He then called to the clerk, who read from the journals a vote of censure passed upon Mr. Justice Robinson, for imposing a fine illegally in a county when on circuit, without view or evidence. Was their resolution founded on any corruption of that judge? No; you would, if so, have addressed to remove him. I called for the resolution, therefore, not to charge him with guilt, I am persuaded he acted merely through error; but to vindicate him, to vindicate you, and to exhort you to be consistent. You thought a much smaller violation of law was deserving your reprobation.—Do not abandon yourselves and your country to slavery, by suffering so much a grosser and more dangerous transgression of the constitution to become a precedent for ever. In tenderness even to the judges, interpose. Their regret, which I am sure they now feel on reflection, cannot undo what they have done; their hands cannot wash away what is written in their records; but you may repair whatever has been injured: if your friend had unwillingly plunged a dagger into the breast of a stranger, would you prove his innocence by letting the victim bleed to death? The constitution has been wounded deeply, but I am persuaded innocently; it is you only, who, by neglecting to interpose, can make the consequences fatal, and the wound ripen into murder.

I would

I would wish, I own, that the liberty of Ireland should be supported by her own children; but if she is scorned and rejected by them, when her all is at stake, I will implore the assistance even of two strangers; I will call on the right honourable secretary to support the principles of the British constitution. Let him not render his administration odious to the people of Ireland, by applying his influence in this house to the ruin of their personal freedom. Let him not give a pretence to the enemies of his friend in a sister country, to say that the son of the illustrious Chatham is disgracing the memory of his great father; that the trophies of his Irish administration are the introduction of an inquisition among us, and the extinction of a trial by jury; let them not say that the pulse of the constitution beats only in the heart of the empire, but that it is dead in the extremities. He concluded with declaring his hearty concurrence in the resolution proposed.

The attorney-general (Fitzgibbon), in a speech of much personality, opposed Mr. Curran's motion.

Mr. Curran, in reply, thanked the right honourable gentleman for restoring him to his good humour, and for having with great liberality and parliamentary decency answered his arguments with personality! Some expressions could not heat him, when coming from persons of a certain distinction. He would not interrupt the right honourable

honourable gentleman in the fifth repetition of his speech. He would prevent his arguments by telling him he had not in one instance alluded to Mr. Reilly. The right honourable gentleman said, he had declared the judges guilty; but he had said no such thing. He said, if any judge was to act in the manner he mentioned, it would be an aggravation of his guilt. The right honourable gentleman had said, that the house of commons had no right to investigate the conduct of judges; if so, he would ask the learned serjeant, why he sat in that chair? he would ask why the resolution had been just read from the journals?—The gentleman had called him a babbler; he could not think that was meant as a disgrace, because in another parliament, before he had the honour of a seat in that house, but when he was in the gallery, he had heard a young lawyer named Babblor. He did not recollect that there were sponsors at the baptismal font, nor was there any occasion, as the infant had promised and vowed so many things in his own name. Indeed he found it difficult to reply, for he was not accustomed to pronounce panegyric upon himself; he did not well know how to do it; but since he could not tell them what he was, he could tell them what he was not: He was not a man whose respect in person and character depended upon the importance of his office; he was not a young man who thrust himself into the foreground of a picture which ought to be occupied by a better figure; he was not a man who replied with invective when

sinking

sinking under the weight of argument ; he was not a man who denied the necessity of a parliamentary reform at the time he proved the expediency of it, by reviling his own constituents, the parish clerk, the sexton, and grave-digger ; and if there was any man who could apply what he was not to himself, he left him to think of it in the committee, and to contemplate upon it when he went home.

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

ON THE

COMMERCIAL RESOLUTIONS.

HOUSE OF COMMONS, SATURDAY, JULY 23, 1785.

MR. CURRAN.—I can easily excuse some inconsistencies in the conduct of the right honourable secretary, for some accidents have befallen him: when we met last, he desired us to adjourn for three weeks; we did so; and now wants above a fortnight more. But will that help forward the business before the house? will it expedite the progress of a bill, to say, let us wait till the packet comes in from England, and perhaps we shall have some news about the propositions. Did the British minister act in this manner? no; when he postponed from time to time the consideration of the propositions, he did not postpone the other business of the house: he did not say, let it wait till the packet comes from Dublin. This the Irish minister is forced to do

do: I say forced, for I am sure it is not his inclination; it must distress him greatly; and I sincerely feel for and pity his distress.

When we had the eleven propositions before us, we were charmed with them. Why? because we did not understand them. Yes, the endearing word reciprocity rang at every corner of the streets. We then thought that the right honourable gentleman laid the propositions before us by authority; but the English minister reprobates them as soon as they get to England, and the whole nation reprobates them: thus, on one hand we must conclude the English minister tells the Irish minister to propose an adjustment, and when it goes back alters every part; or, that the Irish minister proposed it without any authority at all. I am inclined to believe the latter, for it would add to the gentleman's distress to suppose the former.

Now let us mark another inconsistency into which the right honourable gentleman is driven, no doubt against his will. Time to deliberate was refused us, when we had something to deliberate upon; and now, when we are told we have nothing before us to consider, we are to have a fortnight's recess to enable us to think about nothing. And time indeed it will take, before we can think to any purpose. It will take time for the propositions to go through, and perhaps to be again altered in the house of lords. It will take time
for

for them to be reconsidered in the British commons. It will take time for them to come over here. It will take time for us to consider them, though that time is likely to be very short. It will take time to send them back to England. It will take time for them to be returned to us again; and then time will be required to carry them into execution.

But a rumour hath gone abroad of a studied design to delay the discussion of this business until there shall be no members in town. But away with such a suspicion; I think too honourably of the right honourable gentleman; but yet I should be glad to hear him say, there is not even an idea of the base design of forcing them down our throats.

Mr. secretary Orde moved, that the house do adjourn to Tuesday se'nnight.

Mr. Curran.—Sir, the adjournment proposed is disgraceful to parliament, and disgraceful to the nation. I must explain myself, by stating a few facts, though they relate to a subject that I own I cannot approach but with reluctance. The right honourable gentleman early in the session produced a set of propositions, which he was authorised to present to us as a system of final and permanent commercial adjustment between the two kingdoms. As a compensation for the expected advantages of this system, we were called
upon

upon to impose £140,000 a year on this exhausted country. Unequal to our strength, and enormous as the burden was, we submitted ; we were willing to strain every nerve in the common cause, and to stand or fall with the fate of the British empire. But what is the event? I feel how much beneath us it would be to attend to the unauthenticated rumours of what may be said or done in another kingdom ; but it would be a ridiculous affectation in us not to know that the right honourable gentleman's system has been reprobated by those under whose authority he was supposed to act, and that he himself has been deserted and disavowed. I cannot, for my own part, but pity the calamity of a man who is exposed to the contempt of the countries as an egregious dupe, or to their indignation as a gross impostor ; for even he himself now abandons every hope of those propositions returning to this house in the form they left it. On the contrary, he now only hopes that he may be able to bring something forward that may deserve our approbation on some future day. He requests an adjournment for ten days, and he promises that he will give a week's notice, when the yet undiscovered something is to be proposed, which something he promises shall be agreeable to this nation, and authorised by the English minister. On what his confidence of this is founded I know not, unless he argues, that because he has been disavowed and exposed in his past conduct by his employers, he may rely on their supporting him in future. But however the
right

right honourable gentleman may fail in drawing instruction from experience or calamity, we ought to be more wise; we should learn caution from disappointment. We relied on the right honourable gentleman's assurances—we found them fallacious: we have oppressed the people with a load of taxes, as a compensation for a commercial adjustment; we have not got that adjustment; we confided in our skill in negotiating, and we are rendered ridiculous by that confidence. We looked abroad for the resources of Irish commerce, and we find that they are to be sought for only at home, in the industry of the people, in the honesty of parliament, and in our learning that negotiation must inevitably bring derision on ourselves, and ruin on our constituents. But you are called on to depend on the right honourable gentleman's regard for his own reputation: when the interest of the people is at stake, can we be honest in reposing on so despicable a security? Suppose this great pledge of the right honourable gentleman's character should chance to become forfeited, where will you look for it? When he sails for England, is it too large to carry with him? Or, if you would discover in what parish of Great Britain it may be found, will the sacrifice be an atonement to the people who have already been betrayed by trusting to so contemptible a pledge? See then what we do by consenting to this short adjournment: we have been abased already, and we neglect every other duty, in order to solicit a repetition of that abuse.

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If this something should arrive at all, it will be proposed when the business of the country will engage every county member at the assizes: for as to his week's notice, it either cannot reach him in time, or, if it should, he cannot possibly obey it. Is it then our wish to have a new subject of such moment, as a contract that is to bind us for ever, concluded in half a house, and without a single representative for a county in the number? Is it wise to trust to half the house in a negotiation in which the wisdom of the whole has been already defeated? But what is the necessity that induces us to acquiesce in a measure of so much danger and disgrace? Is this nation brought to so abject a condition by her representatives as to have no refuge from ruin, but in the immediate assistance of Great Britain? Sir, I do not so far despair of the public weal: oppressed as we were, we found a resource for our constitution in the spirit of the people; abused as we now find ourselves, our commerce cannot fail of a resource in our virtue and industry, if we do not suffer ourselves to be diverted from those great and infallible resources, by a silly hope from negotiation, for which we are not adapted, and in which we can never succeed. And if this great hope still is left, why fill the public mind with alarm and dismay? Shall we teach the people to think, that something instantly must be done, to save them from destruction? Suppose that something should not, cannot be done, may not the attempt, instead of uniting the two countries, involve

volve them in the consequence of discord and dissention? But, if your compliance with the right honourable gentleman's requisition does not sink the people into despair of their own situation, does it not expose the honour and integrity of this house to suspicion and distrust? For what can they suppose we intend by this delay? The right honourable gentleman may find it worth his while to secure the continuance in his office by an expedient, however temporary and ineffectual; but, sir, if we are supposed to concur in such a design, our character is gone with the people; for, if we are honest, it can be of no moment to us whether this secretary or that minister shall continue in office or not. I know it has been rumoured that the right honourable gentleman may take advantage of a thin house, to impose upon this country the new set of resolutions that have passed the commons of Great Britain. Sir, I do not suspect any such thing, nor would I encourage such a groundless apprehension. Sir, I do not think it would be easy to find a man who would stand within the low-water mark of our shore, and read some of those resolutions above his breath, without feeling some uneasiness for his personal safety; neither can I think, if a foreign usurpation should come crested to our bar, and demand from the treachery of this house a surrender of that constitution which has been established by the virtue of the nation, that we would answer such a requisition by words.

But, sir, though the people should not apprehend such extreme perfidy from us, they will be justly alarmed if they see us act with needless precipitation; after what is past, we cannot be surprised at not meeting with the most favourable interpretations of our conduct.

On great subjects, the magnitude of the ideas to be compared may cause some confusion in the minds of ordinary men; they will, therefore, examine our conduct by analogy to the more frequent occurrences of common life: such cases happen every day. Will you permit me to suppose a very familiar one, by which our present situation may be illustrated to a common mind.

I will suppose then, sir, that an old friend that you loved, just recovering from a disease in which he had been wasted almost to death, should prevail upon you to take the trouble of buying him a horse for the establishment of his health; and I the more freely presume to represent you for a moment in an office so little corresponding with the dignity of your station, from a consciousness that my fancy cannot put you in any place to which you will not be followed by my utmost respect. I will, therefore, suppose that you send for a horse-jockey, who does not come himself, but sends his foreman.

Says the foreman, "sir, I know what you want; my master has a horse that will exactly
match

match your friend; he is descended from Rabelais' famous Johannes Caballus, that got a doctor of physic's degree from the college of Rheims; but your friend must pay his price. My master knows he has no money at present, and will therefore accept his note for the amount of what he shall be able to earn while he lives, allowing him, however, such moderate subsistence as may prevent him from perishing. If you are satisfied I will step for the horse and bring him instantly, with the bridle and saddle, which you shall have in the bargain." But, friend, say you, are you sure that you are authorised to make this bargain? What, sir, cries the foreman, would you doubt my honour? Sir, I can find three hundred gentlemen who never saw me before, and yet have gone bail for me at the first view of my face. Besides, sir, you have a greater pledge; my honour, sir, my renown is at stake. Well, sir, you agree, the note is passed; the foreman leaves you, and returns without the horse. What, sir! where is the horse? Why, in truth, sir, answers he, I am sorry for this little disappointment, but my mistress has taken a fancy to the horse, so your friend cannot have him. But we have a nice little mare that will match him better; as to the saddle he must do without that, for little master insists on keeping it; however, your friend has been so poor a fellow that he must have too thick a skin to be much fretted by riding bare-backed; besides the mare is so low that

his feet will reach the ground when he rides her; and still further to accommodate him, my master insists on having a chain locked to her feet, of which lock my master is to have a key to lock or unlock as he pleases, and your friend shall also have a key so formed that he cannot unlock the chain, but with which he may double-lock it if he thinks fit.

What, sirrah, do you think I'll betray my old friend to such a fraud? Why really, sir, you are impertinent, and your friend is too peevish; it was only the other day that he charged my master with having stolen his cloak, and grew angry, and got a ferrule and spike to his staff. Why, sir, you see how good-humouredly my master gave back the cloak. Sir, my master scorns to break his word, and so do I; sir, my character is your security. Now, as to the mare, you are too hasty in objecting to her, for I am not sure that you can get her; all I ask of you now is to wait a few hours in the street, that I may try if something may not be done; but let me say one word to you in confidence:

I am to get two guineas if I can bring your friend to be satisfied with what we can do for him; now if you assist me in this, you shall have half the money; for to tell you the truth, if I fail in my undertaking, I shall either be discharged entirely or degraded to my former place of helper in the stable.

Now

Now, Mr. Speaker, as I do not presume to judge of your feelings by my own, I cannot be sure that you would beat the foreman, or abuse him as an impudent lying imposter: I rather think you would for a moment be lost in reflecting, and not without a pang, how the rectitude of your heart and the tenderness of your head had exposed you to be the dupe of improbity and folly. But, sir, I know you would leave the wretch who had deceived you, or the fool who was deceived by his master, and you would return to your friend. And methinks you would say to him, we have been deceived in the course we have adopted; for, my good friend, you must look to the exertions of your own strength for the establishment of your health. You have great stamina still remaining, rely upon them, and they will support you. Let no man persuade you to take the ferrule or spike from your staff. It will guard your cloak. Neither quarrel with the jockey, for he cannot recover the contents of the note, as you have not the horse; and he may yet see the policy of using you honestly, and deserving to be your friend. If so, embrace him, and let your staff be lifted in defence of your common safety, and in the mean time, let it be always in readiness to defend yourself.

Such, sir, is the advice you would offer to your friend, and which I would now offer to this house. There is no ground for despairing; let

us not therefore alarm the people. If a closer connexion with Great Britain is not now practicable, it may become practicable hereafter. But we shall ruin every hope of that kind by precipitation. I do therefore conjure gentlemen not to run the risk of forcing us at a week's notice to enter on a subject, on which every man in the nation ought to be allowed the most unlimited time for deliberation. I do conjure them not to assent to a measure that can serve nobody but the proposer of it; that must expose the members of this house to the distrust of their constituents, and which may in its consequences endanger the harmony of two kingdoms, whose interests and fortunes ought never to be separated.

S P E E C H
OF
JOHN PHILPOT CURRAN, Esq.
ON THE BILL FOR REGULATING THE
COMMERCIAL INTERCOURSE,
BETWEEN
GREAT BRITAIN AND IRELAND.
HOUSE OF COMMONS, FRIDAY, AUGUST 12, 1785.

M_{R.} ORDE moved for leave to bring in the bill.

Mr. Curran said, he was too much exhausted to say much at that hour (six o'clock) on the subject. His zeal had survived his strength. He wished his present state of mind and body might not be ominous of the condition to which Ireland would be reduced, if this bill should become a law. He could not therefore yield even to his weakness. It was a subject which might animate the dead. He then took a view of the progress of the arrangement, and arraigned the insidious conduct of administration. In Ireland it was proposed by the minister; in England it was reprobated by the same minister. He had known children learn to play at cards, by playing the right hand against the left: he had never before heard of a negociation being learned in that way.
He

He said, a bill was not a mode of negotiating; our law spoke only to ourselves—bound only ourselves;—it was absurd therefore to let a bill proceed. But the commercial part was out of the question; for this bill portended a surrender of the constitution and liberty of Ireland. If, said he, we should attempt so base an act, it would be void, as to the people. We may abdicate our representation, but the right remains with the people, and can be surrendered only by them. We may ratify our own infamy; we cannot ratify their slavery. He feared the British minister was mistaken in the temper of Ireland, and judged of it by former times. Formerly the business here was carried on by purchase of majorities; there was a time when the most infamous measure was sure of being supported by as infamous a majority. But things were changed; the people were enlightened and strong; they would not bear a surrender of their rights, which, he said, would be the consequence if they submitted to this bill. It contained a covenant to enact such laws as England should think proper, that would annihilate the parliament of Ireland. The people here must go to the bare of the English house of commons for relief; and for a circuitous trade to England, we were accepting, he said, a circuitous constitution.

He said it was different totally from the cases to which it had been compared, the settlement of 1779, or the Methuen treaty: there all was
 . specific

specific and defined; here all was fustian and uncertain. A power to bind externally would involve a power also of binding internally; this law gave the power to Great Britain of judging what would be a breach of the compact, of construing it, in fact of taxing us as she pleased, while it gave her new strength to enforce our obedience. In such an event, he said, we must either sink into utter slavery, or the people must wade to a re-assumption of their rights through civil blood, or be obliged to take refuge in an union, which, he said, would be the annihilation of Ireland, and what he suspected the minister was driving at. Even the Irish minister, he said, no longer pretended to use his former language on this subject; formerly we were lost in a foolish admiration at the long impeded march of oratoric pomp with which the secretary displayed the magnanimity of Great Britain. That kind of eloquence, he supposed, was formed upon some model, but he suspected that the light of political wisdom was more easily reflected than the heat of eloquence; yet we were in raptures even with the oratory of the honourable gentleman. However he now had descended to an humble style. He talked no more of reciprocity, no more of emporium.

He then went into general observations to shew that this treaty would give no solid advantages to Ireland, but was a revocation of the grant of 1779. He said, he loved the liberty of Ireland; he would therefore vote against the bill,

bill, as subversive of that liberty; he would also vote against it as leading to a schism between the two nations, that must terminate in a civil war, or in an union at best. He was sorry, he said, that he troubled them so long, but he feared it might be the last time he should ever have an opportunity of addressing a free parliament; and if, said he, the period is approaching when the boasted constitution of Ireland will be no more, I own I feel a melancholy ambition in deserving that my name may be enrolled with those who endeavoured to save it in its last moment. Posterity will be grateful for the last effort, though it should have failed of success.

House of Commons, Monday, August 15, 1785.

THE Right Hon. Thos. Orde having intimated that he would not press the further consideration of the commercial regulation bill during the session, which was in fact giving up the bill, and Mr. Flood having moved the following resolution:

“ Resolved, That we hold ourselves bound
 “ not to enter into any engagement to give up
 “ the sole and exclusive right of the parliament
 “ of Ireland to legislate for Ireland in all cases
 “ whatsoever, as well externally as commercial-
 “ ly and internally.”

Mr. Curran

Mr. Curran expressed the effusions of his joy upon the victory this country had obtained. He said he would support the resolution proposed by the honourable member, because he thought it necessary to declare to the people, that their rights had not been solely supported by 110 independent gentlemen, but that if eight or ten of them had been absent, that those who had countenanced the measure would have abandoned every idea of prosecuting it further. It had ever been the custom of our ancestors, when the constitution had been attacked, to enter into some spirited step for its support. Why was Magna Charta passed? It was passed not to give freedom to the people, but because the people were already free. Why was the repeal of the 6th of Geo. I. ? Not to give independence to the men of Ireland, but because Ireland was in itself an independent nation. This resolution did not go to give rights but to declare that we will preserve our rights. We were told to be cautious how we commit ourselves with the parliament of Great Britain : whether this threat carried with it more of prudence or timidity, he should leave gentlemen to determine. He rejoiced that the cloud which had lowered over them had passed away, and he declared he had no intention to wound the feelings of the minister, by triumphing in his defeat ; on the contrary, he might be said to rise with some degree of self-denial, when he gave to others an opportunity of exulting in the victory. The opposition in England had thrown
many

many impediments in the way, but he would remember with gratitude, that the opposition there had supported the liberties of Ireland. When he saw them reprobating the attacks made upon the trial by jury; when he saw them supporting the legislative rights of Ireland, he could not refrain from giving them his applause. They well knew that an invasion of the liberty of Ireland would tend to an attack upon their own. The principle of liberty, thank Heaven, still continued in those countries:—that principle which had stained the fields of Marathon, stood in the pass to Thermopylæ, and gave to America independence. Happy it was for Ireland, that she had recovered her rights by victory, not stained by blood—not a victory bathed in the tears of a mother, a sister, or a wife—not a victory hanging over the grave of a Warren or a Montgomery, and uncertain whether to triumph in what she had gained, or to mourn over what she had lost!

He said, as to the majority who had voted for bringing in the bill, the only way they could justify themselves to their constituents was by voting for the resolution. As to the minority who had saved the country, they needed no vindication; but those who voted for the introduction of the bill must have waited for the committee, to shew the nation that they would never assent to the fourth proposition. That opportunity, he said, could never arrive.—The bill was at an end.

The

The cloud that had been collecting so long, and threatening to break in tempest and ruin on our heads, had passed harmless away. The siege that was drawn round the constitution was raised, and the enemy was gone. *Juvat ire, et Dorica castra*, and they might now go abroad without fear, and trace the dangers they had escaped; here was drawn the line of circumvallation, that cut them off for ever from the Eastern world: and there the corresponding one, that enclosed them from the West. Nor let us, said he, forget in our exultation to whom we are indebted for the deliverance.—Here stood the trusty mariner [Mr. Conolly] on his old station the mast head, and gave the signal. Here [Mr. Flood] all the wisdom of the state was collected, exploring your weakness and your strength, detecting every ambuscade, and pointing to the hidden battery, that was brought to bear on the shrine of freedom. And there [Mr. Grattan] was exerting an eloquence more than human, inspiring, forming, directing, animating, to the great purposes of your salvation, &c. But I feel, said he, that I am leaving the question, and the bounds of moderation; but there is an ebullition in great excesses of joy that almost borders on insanity. I own I feel something like it in the profuseness with which I share in the general triumph.

It was not, however, a triumph which he wished to enjoy at the expense of the honourable gentleman who had brought in the bill, he was willing

ing to believe, with the best intention. Whatever he might have thought before, he now felt no trace of resentment to the honourable gentleman. On the contrary, he wished that that day's intercourse, which would probably be their last, might be marked on his part, with kindness and respect.

He was for letting the right honourable gentleman easily down; he was not for depressing him with the triumph, but he was for calling him to share in the exultation. Upon what principle could the gentlemen who supported the previous question defend their conduct, unless it was in contradiction to the general rule of adhering to measures, not to the man? Here it was plain they were adhering to the man, not to the measure; the measure had sunk, but the man was still afloat. Perhaps they thought it decent to pay a funeral compliment to his departure; yet he warned them how they pressed too eagerly forward, for as there could not be many bearers, some of them might be disappointed of the scarf or the cypress. He besought them now to let all end in good humour, and, like sailors, who had pursued different objects, when they got into port, shake hands with harmony.

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

ON

PENSIONS.

HOUSE OF COMMONS, MARCH 13, 1786.

MR. FORBES presented a bill to limit the amount of pensions; which was received and read the first time.

Mr. Mason moved, “ That the second reading “ of the bill be postponed to the first of August.”

Sir Boyle Roche opposed the bill, and said he “ would not stop the fountain of Royal favour, but let it flow freely, spontaneously, and “ abundantly, as Holywell in Wales, that turns “ so many mills.”

Mr. Curran.—I object to adjourning this bill to the first of August, because I perceive in the present disposition of the house, that a proper decision will be made upon it this night. We have
set

set out upon our enquiry in a manner so honourable, and so consistent, that we have reason to expect the happiest success, which I would not wish to see baffled by delay.

We began with giving the full affirmative of this house, that no grievance exists at all; we considered a simple matter of fact, and adjourned our opinion, or rather we gave sentence on the conclusion, after having adjourned the premises. But I do begin to see a great deal of argument in what the learned baronet has said, and I beg gentlemen will acquit me of apostacy if I offer some seasons why the bill should not be admitted to a second reading.

I am surprised that gentlemen have taken up such a foolish opinion, as that our constitution is maintained by its different component parts, mutually checking and controlling each other:—they seem to think with Hobbes, that a state of nature is a state of warfare, and that, like Mahomet's coffin, the constitution is suspended between the attraction of different powers. My friends seem to think that the crown should be restrained from doing wrong by a physical necessity, forgetting that if you take away from man all power to do wrong, you at the same time take away from him all merit of doing right, and by making it impossible for men to run into slavery, you enslave them most effectually. But if instead of the three different parts of our constitution drawing forcibly

bly in right lines, at opposite directions, they were to unite their power, and draw all one way, in one right line, how great would be the effect of their force, how happy the direction of this union. The present system is not only contrary to mathematical rectitude, but to public harmony; but if instead of privilege setting up his back to oppose prerogative, he was to saddle his back and invite prerogative to ride, how comfortably they might both jog along; and therefore it delights me to hear the advocates for the royal bounty flowing freely and spontaneously and abundantly, as Holywell in Wales. If the crown grants double the amount of the revenue in pensions, they approve of their royal master, for he is the breath of their nostrils.

But we shall find that this complaisance, this gentleness between the crown and its true servants, is not confined at home, it extends its influence to foreign powers. Our merchants have been insulted in Portugal, our commerce interdicted; what did the British lion do? Did he whet his tusks? Did he bristle up and shake his mane? Did he roar? No; no such thing—the gentle creature wagged his tail for six years at the court of Lisbon, and now we hear from the Delphic oracle on the treasury bench, that he is wagging his tail in London to chevalier Pinto, who, he hopes soon to be able to tell us, will allow his lady to entertain him as a lap-dog; and when she does, no doubt the British factory will furnish

some of their softest woollens to make a cushion for him to lie upon. But though the gentle beast has continued so long fawning and couching, I believe his vengeance will be great as it is slow, and that posterity, whose ancestors are yet unborn, will be surprised at the vengeance he will take.

This polyglot of wealth, this museum of curiosities, the pension list, embraces every link in the human chain, every description of men, women and children, from the exalted excellence of a Hawke or a Rodney, to the debased situation of the lady who humbleth herself that she may be exalted. But the lessons it inculcates form its greatest perfection:—it teacheth, that sloth and vice may eat that bread which virtue and honesty may starve for after they had earned it. It teaches the idle and dissolute to look up for that support which they are too proud to stoop and earn. It directs the minds of men to an entire reliance on the ruling power of the state, who feed the ravens of the royal aviary, that cry continually for food. It teaches them to imitate those saints on the pension list that are like the lilies of the field—they toil not, neither do they spin, and yet are arrayed like Solomon in his glory. In fine, it teaches a lesson which indeed they might have learned from Epictetus—that it is sometimes good not to be over virtuous: it shews, that in proportion as our distresses increase, the munificence of the crown increases

increases also—in proportion as our clothes are rent, the royal mantle is extended over us.

But notwithstanding that the pension list, like charity, covers a multitude of sins, give me leave to consider it as coming home to the members of this house—give me leave to say, that the crown, in extending its charity, its liberality, its profusion, is laying a foundation for the independence of parliament; for hereafter, instead of orators or patriots accounting for their conduct to such mean and unworthy persons as freeholders, they will learn to despise them, and look to the first man in the state, and they will by so doing have this security for their independence, that while any man in the kingdom has a shilling they will not want one.

Suppose at any future period of time the boroughs of Ireland should decline from their present flourishing and prosperous state—suppose they should fall into the hands of men who would wish to drive a profitable commerce, by having members of parliament to hire or let; in such a case a secretary would find great difficulty if the proprietors of members should enter into a combination to form a monopoly; to prevent which in time, the wisest way is to purchase up the raw material, young members of parliament, just rough from the grass, and when they are a little bitted, and he has got a pretty stud, perhaps of seventy, he may laugh at the slave-mer-

chant: some of them he may teach to sound through the nose, like a barrel organ; some, in the course of a few months, might be taught to cry hear! hear! some, chair! chair! upon occasion, though, those latter might create a little confusion, if they were to forget whether they were calling inside or outside of those doors. Again, he might have some so trained that he need only pull a string, and up gets a repeating member; and if they were so dull that they could neither speak nor make orations, (for they are different things) he might have them taught to dance, *pedibus ire in sententiâ*.—This improvent might be extended; he might have them dressed in coats and shirts all of one colour, and of a Sunday he might march them to church two by two, to the great edification of the people and the honour of the christian religion; afterwards, like ancient Spartans, or the fraternity of Kilmainham, they might dine all together in a large hall. Good heaven! what a sight to see them feeding in public upon public viands, and talking of public subjects for the benefit of the public. It is a pity they are not immortal; but I hope they will flourish as a corporation, and that pensioners will beget pensioners to the end of the chapter.

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

ON

PENSIONS.

HOUSE OF COMMONS, MONDAY, MARCH 12, 1787.

MR. FORBES presented a bill to limit pensions; it was read a first time: he then moved, that it be read a second time on the following day; this was opposed by the Chancellor of the Exchequer, who moved, that the bill should be read a second time on the first of August.

Mr. Curran said he felt too much respect for the excellent mover of the bill, and too strong a sense of the necessity of the measure, to give it only a silent support. He rejoiced, he said, in the virtuous perseverance of his honourable friend in labouring for the establishment of our constitution, by securing the independence of parliament. He would offer some reason in defence of the bill, though he felt the full force of the policy adopted by administration, to make any
attempt

attempt of that kind either ridiculous or impossible. He observed the gentlemen, he said, consulting whether to bury the question under a mute majority, or whether to make a sham opposition to it by setting up the old gladiator of administration, new polished and painted for the field. They expected, he supposed, that men should shrink in silence and disgust from such a competition. He would, he said, defend the principle of the bill on the grounds of œconomy, but still more of constitution. He adverted to the frame of our civil state, it depended on an exact balance of its parts, but he said, from our peculiar situation, that equipoise on which our liberty depends must be continually losing ground, and the power of the crown continually increasing. A single individual can be vigilant and active, improving every occasion of extending his power; the people are not so, they are divided in sentiment, in interest without union, and therefore without co-operation, and from the necessity of bringing the constitution frequently back to its first principles; but this, he said, was doubly necessary to do by law, in a country where a long system of dividing the people had almost extinguished that public mind, that public vigilance and jealousy, with which the conduct of the crown was watched over in Great Britain. But further, he said, it was rendered necessary by the residence of our king in another country.—His authority must be delegated first to a vice-roy,

roy, and next it fell to a secretary, who could have no interest in the good of the people; no interest in future fame, no object to attract him but the advancement of his dependants. Then, he said, the responsibility that binds an English king to moderation and frugality was lost here in the confusion of persons, or in their insignificance. This, he said, might be deemed an unusual language in that house, but he assured the right honourable secretary, he did not speak with any view of disturbing his personal feelings; he did not admire, nor would he imitate the cruelty of the Sicilian tyrant who amused himself with putting insects to the torture; he was therefore stating facts. What responsibility, said he, can be found or hoped for in an English secretary? estimate them fairly, not according to the adulation that lifts them into a ridiculous importance while they are among you, or the alike unmerited contumely that is heaped upon them by disappointment and shame when they leave you. But what have they been in fact?—why a succession of men, sometimes with heads, sometimes with hearts, oftener with neither.

But as to the present right honourable secretary, he said, it was peculiarly ridiculous to talk of his responsibility or his œconomy to the people: his œconomy was only to be found in reducting the scanty pittance which profusion had left for the encouragement of our manufactures;

tures; or in withholding from the undertakers of a great national object that encouragement that had been offered them on the express faith of parliament; unless, perhaps, it were to be looked for in the pious plan of selling the materials of houses of religious worship on a principle of œconomy. But where will you look, said he, for his responsibility as a minister? You will remember his commercial propositions. They were proposed to this country on his responsibility. You cannot forget the exhibition he made; you cannot have yet lost his madrigal on reciprocity: but what was the event? He went to Great Britain with ten propositions, and he returned with double the number, disclaimed and abandoned by those to whom he belonged; and shorn of every pretension to responsibility; but look for it in the next leading feature of his administration.

We gave an addition of £140,000 in taxes on the express compact and condition of confining expense within the limits of revenue. Already has that compact been shamefully evaded: but what says the responsible gentleman? Why he stood up in his place, and had the honest confidence boldly to deny the fact. Now, said he, I should be glad to ask who that right honourable gentleman is? Is he the whole house of commons? If he be, he proposed the compact. Is he the king? he accepted it by his viceroy. Is he the viceroy? he accepted by himself. In every
character

character that could give such a compact either credit, or dignity, or stability, he has either proposed or ratified it; in what character then does the right honourable gentleman deny it? why in his own; in that of a right honourable gentleman. Can any man then, said he, be so silly as to think that so barefaced a spirit of profusion can be stopt by any thing less than a law?—Or can any man point out any ground on which we can confide in the right honourable gentleman's affection to the interest or even the peace of this country? At a time when we are told that the people are in a state of tumult little short of rebellion, when you ought to wish to send an angel to recall the people to their duty, and restore the credit of the laws, what does he do?—he keeps three judicial places, absolute, vacant, or sinecure places, as if in this country not officers but offices are to become superannuated; and he sends the commission with a job tacked to it, to be displayed in the very scene of this supposed confusion.—Would this contemptuous trifling with the public be borne in Great Britain? No, sir; but what the substance of an English minister, with all his talents, would not dare to attempt in that country, his fetch is able to atchieve, and with impunity, in this.

But a right honourable member opposes the principle of the bill, as being in restraint of the
royal

royal bounty. I agree with him in this sentiment, but I differ from this argument. It becomes the dignity and humanity of a generous people to leave it in the power of the sovereign to employ some part of the public wealth for honourable purposes, for rewarding merit, for encouraging science:—Nor would it become us to enquire too narrowly into every casual or minute misapplication; but a gross and general application of the people's money to the encouragement of every human vice is a crying grievance that calls on every man to check it; not by restraining the bounty of the crown, but curbing the profusion of Irish administrations. The pension list, at the best of times, was a scandal to this country; but the present abuses of it, he said, went beyond all bounds, and almost justified what he would formerly have considered as shameful. If a great officer of state, for instance, finds that the severity of business requires the consolation of the tender passion, he courts through the pension list, and the lady, very wisely, takes hold of the occasion, which, perhaps, could not be taken of the lover, and seizes time by the forelock. Why, sir, we may pass over a little treaty of that sort; it may naturally enough fall under the articles of concordatum or contingencies; but that unhappy list has been degraded by a new species of prostitution that was unknown before: the granting of honours and titles, to lay the foundation for the
grant

grant of a pension; the suffering any man to steal a dignity, for the purpose that a barren beggar steals a child. It was reducing the honours of the state from badges of dignity to badges of mendicancy.

He then adverted to the modern practice of doubling the pensions of members of that house, who were unhappily pensioners already. Was the secretary, he said, afraid of their becoming converts? Was it necessary to double-bolt them with pensions? Was there really so much danger, that little fricksay would repent and go into a nunnery, that the kind keeper must come down with another hundred to save her from becoming honest.

But a right honourable gentleman, he said, had made another objection rather inconsistent with his former:—he feared it would take away the controul of parliament on pensions within the limits of the act proposed. The objection was not, therefore founded in fact, at the same time that the argument admitted that the unlimited power of pensioning was a grievance that ought to be remedied by some effectual controul; such he said, was the principle and the effect of this bill, if carried into a law. It would not restrain the crown; it would not restrain a lord lieutenant; it would only restrain a secretary from that shameful profusion of the public treasure, unimputable and unknown to his majesty

jesty or his viceroy, which was equally disgraceful to the giver and receiver.—It was a bill to preserve the independence of parliament; it was a bill to give us the constitution of Great Britain when we had it not before. It was peculiarly necessary when we had adopted a penal law of Great Britain, giving a new force to the executive magistrate, that we should also adopt that law of Great Britain, which might secure the rights of the people: it was a law necessary as a counterpoise to the riot-act: it was a law of invention, and if necessary, prevention; for if, said he, you wait till the evil, which my right honourable friend is anxious to guard against, shall have actually fallen upon this country, the corruption will be universal, and the remedy impossible.

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

ON

CATHOLIC EMANCIPATION.

HOUSE OF COMMONS, MONDAY, OCTOBER 17, 1796.

MR. GRATTAN moved the following resolution:
—“ That the admissibility of persons professing
“ the Roman Catholic religion to seats in par-
“ liament is consistent with the safety of the
“ crown, and the connection of Ireland with
“ Great Britain.”

Seconded by Mr. G. Ponsonby.

Mr. G. Ogle voted for the order of the day.

Mr. Curran began, by declaring, that he had
no words to express the indignation he felt at the
despicable attempt to skulk from the discussion
of so important and so necessary a question, by
the affectation of an appeal to our secrecy and
our

our discretion ; the ludicrous, the ridiculous secrecy of a public assembly ; the nonsense of pretending to conceal from the world what they know as well, or better, than ourselves ; the rare discretion of an Irish parliament hiding from the executive directory of the French republic the operations of their own armies ; concealing from them their victories in Italy, or their humiliation of Great Britain ; concealing from them the various coquetry of her negotiations, and her now avowed solicitations of a peace. As ridiculous and as empty was the senseless parade of affecting to keep our own deliberations a secret. Rely upon it, sir, said he, if our enemies condescend to feel any curiosity as to our discussion, you might as well propose to conceal from them the course of the Danube, or the course of the Rhine, as the course of a debate in this assembly, as winding, perhaps, and perhaps as muddy as either. But the folly of the present advocates for silence and for secrecy went still farther :—it proposed to keep all these matters a profound secret from ourselves ; it went to the extravagant length of saying, that if we were beaten we were not to deliberate upon the means of repairing our disasters, because that would be to own that we were beaten ; that if the enemy was at our gates, it would not be prudent to acknowledge so terrifying a fact, even in considering the means of repelling him ; that if our people were disaffected, we ought to be peculiarly cautious of any measures that could possibly

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bly tend to conciliation and union, because the adoption, or even the discussion of such measures, would be in effect to tell ourselves, and to tell all the world, that the people were disaffected. He said, that the infatuation or the presumption of ministers went even farther than this:— that it insisted upon the denial and avowal of the very same facts; that we were to be alarmed with an invasion, for the purpose of making us obsequious to all the plans of ministers for intrenching themselves in their places; that we were to be panic-struck for them, but disdainful for ourselves, that our people were to be disaffected, and the consequences of that disaffection to be the most dangerous and the most imminent, for the purpose of despoiling ourselves of our best and most sacred privileges. So eminent was this danger, that it was declared by ministers and by their adherents, that in order to preserve our liberties for ever, it was absolutely necessary to surrender them for a time; the surrender had been actually made. So frightfully disunited and divided were we, that we could not venture to trust ourselves with the possession of our freedom, but we were all united as one man against redressing the grievances of the great majority of ourselves; we were all united as one man against the conciliation of our animosities, and the consolidation of our strength. He declared, that, for one, he never would submit to be made the credulous dupe of an impostor so gross and so impudent: he
knew

knew that the times were critical indeed; he knew that it was necessary to open our eyes to our danger, and to meet it in the front; to consider what that danger was, and to consider of the best and perhaps the only, possible means of averting it. For these reasons he considered the resolution not only a measure of justice and of honesty, but of the most pressing necessity.

He knew, he said, that a trivial subject of the day would naturally engage them more deeply, than any more distant object of however greater importance; but he begged they would recollect that the petty interest of party must expire with themselves, and that their heirs must be, not statesmen, nor placemen, nor pensioners, but the future people of the country at large. He knew of no so awful a call upon the justice and wisdom of an assembly, as the reflection that they were deliberating on the interests of posterity.

The first step of ministers was to create a division among the Catholics themselves; the next was to hold them up as a body formidable to the English government, and to their protestant fellow subjects; but he conjured the house to be upon their guard against those despicable attempts to traduce their people, to alarm their fears, or to inflame their resentment. Gentlemen have talked as if the question was, whether we
may

may with safety to ourselves, relax or repeal the laws which have so long concerned our catholic fellow subjects? The real question is, whether you can, with safety to the Irish constitution, refuse such a measure? It is not a question merely of their sufferings or their relief, it is a question of your own preservation. There are some maxims, which an honest Irishman will never abandon, and by which every public measure may be fairly tried. These are, the preservation of the constitution upon the principles established at the revolution, in church and state; and next, the independency of Ireland, connected with Britain as a confederated people, and united indissolubly under a common and inseparable crown. If you wish to know how these great objects may be affected by a repeal of those laws, see how they were affected by their enactment. Here you have the infallible test of fact and experience; and wretched indeed must you be, if false shame, false pride, false fear, false spirit, can prevent you from reading that lesson of wisdom which is written in the blood and the calamities of your country. Here Mr. Curran went into a detail of the property laws as they affected the catholics of Ireland. He described them as destructive of arts, of industry, of private morals and public order, as extirpating even the christian religion among them, and reducing them to the condition of savages and rebels, disgraceful to humanity, and formidable

able to the state. Having traced the progress and effects of those laws from the revolution to 1779; let me now ask you, said he, how have those laws affected the protestant subject and the protestant constitution? In that interval were they free? did they possess that liberty which they denied to their brethren? No, sir, where there are inhabitants, but no people, there can be no freedom; unless there be a spirit, and what may be called a pull in the people, a free government cannot be kept steady or fixed in its seat. You had indeed a government, but it was planted in civil dissension, and watered in civil blood, and whilst the virtuous luxuriance of its branches aspired to heaven, its infernal roots shot downward to their congenial regions, and were intertwined in hell. Your ancestors thought themselves the oppressors of their fellow-subjects, but they were only their jailors; and the justice of Providence would have been frustrated, if their own slavery had not been the punishment of their vice and their folly.

But are those facts for which we must appeal to history? You all remember the year one thousand seven hundred and seventy-nine. What were you then? Your constitution, without resistance, in the hands of the British parliament; your trade in many parts extinguished, in every part coerced. So low were you reduced to beggary and servitude, as to declare, that unless the
mercy

mercy of England was extended to your trade, you could not subsist. Here you have an infallible test of the ruinous influence of those laws in the experience of a century ; of a constitution surrendered, and commerce utterly extinct. But can you learn nothing on this subject from the events that followed? In 1778, you somewhat relaxed the severity of those laws, and improved, in some degree, the condition of the catholics. What was the consequence even of a partial union with your countrymen? The united efforts of the two bodies restored that constitution which had been lost by their separation. In 1782 you became free. Your catholic brethren shared the danger of the conflict ; but you had not justice or gratitude to let them share the fruits of the victory. You suffered them to relapse into their former insignificance and depression. And let me ask you, has it not fared with you according to your deserts? Let me ask you, if the parliament of Ireland can boast of being now less at the feet of the British minister, than at that period it was of the British parliament? Here he animadverted on the conduct of the administration for some years past, in the accumulation of public burdens and parliamentary influence ; but, said he, it is not the mere increase of debt ; it is not the creation of one hundred and ten placemen and pensioners that forms the real cause of the public malady. The real cause is the exclusion of your people from all influence upon the representative.

presentative. The question therefore is, whether you will seek your own safety in the restoration of your fellow-subjects, or whether you will chuse rather to perish than to be just? He then proceeded to examine the objections to a general incorporation of the catholics. On general principles, no man could justify the deprivation of civil rights on any ground but that of forfeiture for some offence. The papist of the last century might forfeit his property for ever, for that was his own; but he could not forfeit the rights and capacities of his unborn posterity. And let me observe, said he, that even those laws against the offender himself were enacted while injuries were recent, and while men were not unnaturally alarmed by the consideration of a French monarchy, a pretender, and a pope; things that we now read of, but can see no more. But are they disaffected to liberty? On what ground can such an imputation be supported? Do you see any instance of any man's religious theory governing his civil or political conduct? Is popery an enemy to freedom? look to France, and be answered. Is protestantism necessarily its friend? You are protestants, look to yourselves, and be refuted. But look further? do you find even the religious sentiments of sectaries marked by the supposed characteristics of their sects? Do you find that a protestant Briton can be a bigot with only two sacraments, and a catholic Frenchman a deist, admitting seven? But you affect to think
your

your property in danger by admitting them into the state. That has been already refuted, but you have yourselves refuted your own objection. Seventeen years ago you expressed the same fear, yet you made the experiment; you opened the door to landed property, and the fact has shewn the fear to be without foundation.

But another curious topic has been stated again; the protestant ascendancy is in danger. What do you mean by that word? Do you mean the right, and property, and dignities of the church? If you do, you must feel they are safe. They are secured by the law, by the coronation oath, by a protestant parliament, a protestant king, a protestant confederated nation. Do you mean the free and protected exercise of the protestant religion? You know it has the same security to support it. Or do you mean the just and honourable support of the numerous and meritorious clergy of our own country, who really discharge the labours and duties of the ministry? As to that, let me say, that if we felt on that subject as we ought, we should not have so many men of talents and virtues struggling under the difficulties of their scanty pittance, and feeling the melancholy conviction that no virtues or talents can give them any hope of advancement. If you really mean the preservation of every right and every honour that can dignify a christian priest, and give authority to his function, I will
protect

protect them as zealously as you. I will ever respect and revere the man who employs himself in diffusing light, hope, and consolation. But if you mean by ascendancy the power of persecution, I detest and abhor it. If you mean the ascendancy of an English school over an Irish university, I cannot look upon it without aversion. An ascendancy of that form raises to my mind a little greasy emblem of stall-fed theology, imported from some foreign land, with the graces of a lady's maid, the dignity of a side-table, the temperance of a larder, its sobriety the dregs of a patron's bottle, and its wisdom the dregs of a patron's understanding, brought hither to devour, to degrade, and to defame. Is it to such a thing you would have it thought that you affixed the idea of the protestant ascendancy? But it is said, admit them by degrees, and do not run the risque of too precipitate an incorporation. I conceive both the argument and the fact unfounded. In a mixed government, like ours, an increase of the democratic power can scarcely ever be dangerous. Not one of the three powers of our constitution acts singly in the line of its natural direction; each is necessarily tempered and diverted by the action of the other two: and hence it is, that though the power of the crown has, perhaps, far transcended the degree to which theory might confine it, the liberty of the British constitution may not be in much danger. An increase of power to any of the three, acts finally upon the
state

state with a very diminished influence, and therefore, great indeed must be that increase in any one of them which can endanger the practical balance of the constitution. Still, however, I contend not against the caution of a gradual admission. But let me ask you, can you admit them any otherwise than gradually? The striking and melancholy symptom of the public disease is, that if it recovers at all, it can be only through a feeble and lingering convalescence. Yet even this gradual admission your catholic brethren do not ask, save under every pledge and every restriction, which your justice and wisdom can recommend to your adoption.

He called on the house to consider the necessity of acting with a social and conciliatory mind, remarking, that contrary conduct may perhaps protract the unhappy depression of our country, but a partial liberty cannot long subsist. A disunited people cannot long subsist. With infinite regret must any man look forward to the alienation of three millions of our people, and to a degree of subserviency and corruption in the fourth: I am sorry, said he, to think it is so very easy to conceive, that in case of such an event the inevitable consequence would be, AN UNION WITH GREAT BRITAIN. And if any one desires to know what that would be, I will tell him: IT WOULD

BE THE EMIGRATION OF EVERY MAN OF CONSEQUENCE FROM IRELAND ; IT WOULD BE THE PARTICIPATION OF BRITISH TAXES WITHOUT BRITISH TRADE ; IT WOULD BE THE EXTINCTION OF THE IRISH NAME AS A PEOPLE. WE SHOULD BECOME A WRETCHED COLONY, PERHAPS LEASED OUT TO A COMPANY OF JEWS, AS WAS FORMERLY IN CONTEMPLATION, AND GOVERNED BY A FEW TAX-GATHERERS AND EXCISEMEN, UNLESS POSSIBLY YOU MAY ADD FIFTEEN OR TWENTY COUPLE OF IRISH MEMBERS, WHO MIGHT BE FOUND EVERY SESSION SLEEPING IN THEIR COLLARS UNDER THE MANGER OF THE BRITISH MINISTER.

Mr. Curran then entered largely into the state of the empire and of its allies ; of the disposition of our enemies towards Great Britain ; of the nature of their political principles ; and, of the rapid dissemination of those principles. He declared that it was difficult to tell whether the dissemination of those principles was likely to be more encouraged by the continuance of the war or by the establishment of a peace ; and if the war was, as has been repeatedly insisted on, a war on our part for the preservation of social order and of limited monarchy, he strongly urged the immediate necessity of making those objects the common interest and the common cause of every man in the nation. He reprobated the idea of any disloyalty in the catholics, an idea which, he said, was sometimes more than intimated, and
sometimes

sometimes as vehemently disclaimed by the enemies of catholic emancipation ; but, he said, the catholics were men, and were of course sensible to the impression of kindness, and injury, and of insult ; that they knew their rights, and felt their wrongs, and that nothing but the grossest ignorance, or the meanest hypocrisy could represent them as cringing with a slavish fondness to those who oppressed and insulted them. He sought, he said, to remove their oppressions, in order to make the interests of the whole nation one and the same ; and to that great object, the resolution, moved by his right honourable friend manifestly tended ; and he lamented exceedingly, that so indecent and so disingenuous a way of evading that motion had been resorted to, as passing to the order of the day, a conduct, that, however speciously the gentlemen who had adopted it might endeavour to excuse, he declared, could be regarded by the catholics, and by the public, no otherwise than as an expression of direct hostility to the catholic claims. He animadverted, with much severity, upon an observation from the other side of the house, that the catholics were already in possession of political liberty, and were only seeking for political power. He asked, what was it then that we were so anxiously withholding, and so greedily monopolizing ; and declared, that the answer which had been given to that observation, by a learned and honourable friend near him (Mr. Wm. Smith)

was

was that of a true patriot, and of a sound constitutional lawyer; namely, that civil liberty was a shadow, without a sufficient portion of political power to protect it.

Having replied to the arguments of several members that had preceded him in the debate, Mr. Curran came to the speech that had been delivered by Dr. Duigenan, and entertained the house, for about half an hour, with one of the most lively sallies of wit and humour that we remember to have heard. He said, that the learned doctor had made himself a very prominent figure in the debate! Furious indeed had been his anger, and manifold his attack; what argument, or what man, or what thing, had he not abused? Half choaked by his rage in refuting those who had spoke, he had relieved himself by attacking those who had not spoke; he had abused the catholics, he had abused their ancestors, he had abused the merchants of Ireland, he had abused Mr. Burke, he had abused those who voted for the order of the day. I do not know, said Mr. Curran, but I ought to be obliged to the learned doctor, for honouring me with a place in the invective; he has called me the bottle-holder of my right honourable friend; sure I am, said he, that if I had been the bottle-holder of both, the learned doctor would have less reason to complain of me than my right honourable friend; for him I should have left perfectly sober, whilst it would very clearly
appear,

appear, that, with respect to the learned doctor, the bottle had not only been managed fairly, but generously; and, that if, in furnishing him with liquor, I had not furnished him with argument, I had, at least, furnished him with a good excuse for wanting it; with the best excuse for that confusion of history, and divinity, and civil law, and canon law, that rollocking mixture of politics, and theology, and antiquity, with which he has overwhelmed the debate, for the havoc and carnage he has made of the population of the last age, and the fury with which he seemed determined to exterminate, and even to devour the population of this; and which urged him, after tearing and gnawing the characters of the catholics, to spend the last efforts of his rage with the most unrelenting ferocity, in actually gnawing their names, [alluding to Dr. Duigenan's pronunciation of the name of Mr. Keogh, and which Mr. Curran said, was a kind of pronuntiatory defamation.] In truth sir, said he, I felt some surprise, and some regret, when I heard him describe the sceptre of lath, and the tiara of straw, and mimic his bedlamite emperor and pope with such refined and happy gesticulation, that he could be prevailed on to quit so congenial a company. I should not, however, said he, be disposed to hasten his return to them, or to precipitate the access of his fit, if by a most unlucky felicity of indiscretion, he had not dropped some doctrines which the silent approbation of the minister seemed to have adopted. Mr. Curran said,

said, he did not mean amongst these doctrines to place the learned doctor's opinions touching the revolution, nor his wise and valorous plan, in case of an invasion, of arming the beadles and the sextons, and putting himself in wind for an attack upon the French by a massacre of the papists; the doctrine he meant was, that catholic franchise was inconsistent with British connection. Strong, indeed, said he, must the minister be in so wild and desperate a prejudice, if he can venture, in the fallen state of the empire, under the disasters of the war, and with an enemy at the gate, if he can dare to state to the great body of the Irish nation, that their slavery is the condition of their connection with England; that she is more afraid of yielding to Irish liberty than of losing Irish connection; and the denunciation, he said, was not yet upon record, it might yet be left with the learned doctor, who, he hoped, had embraced it only to make it odious, had hugged it in his arms with the generous purpose of plunging with it into the deep, and exposing it to merited derision, even at the hazard of the character of his own sanity. It was yet in the power of the minister to decide, whether a blasphemy of this kind should pass for the mere ravings of frenzy, or for the solemn and mischievous lunacy of a minister: he called therefore again, to rouse that minister from his trance, and in the hearing of the two countries, to put that question to him, which must be heard by a third,

Whether

Whether at no period, upon no event, at no extremity, we were to hope for any connection with Britain, except that of the master and the slave; and this even without the assertion of any fact that could support such a proscription? It was necessary, he found, to state the terms and the nature of the connection; it had been grossly misrepresented; it was a great federal contract between perfectly equal nations, pledging themselves to equal fate, upon the terms of equal liberty, upon perfectly equal liberty. The motive to that contract was the mutual benefit to each; the object of it, their mutual and common benefit; the condition of the compact was, the honest and fair performance of it, and from that only, arose the obligation of it. If England shewed a decided purpose of invading our liberty, the compact by such an act of foulness and perfidy was broken, and the connection utterly at an end: but, he said, the resolution moved for by his right honourable friend to the test of this connection, to invade our liberty, was a dissolution of it. But what is liberty as known to our constitution? It is a portion of political power necessary to its conversation; as, for instance, the liberty of the commons of those kingdoms is that right, accompanied with a portion of political power to preserve it against the crown and against the aristocracy. It is by invading the power that the right is attacked in any of its constituent parts; hence it is, that if the crown shews
a deliberate

a deliberate design of so destroying it, it is an abdication; and let it be remembered, that by our compact we have given up no constitutional right. He said, therefore, that he was warranted, as a constitutional lawyer, in stating, that if the crown or its ministers, by force or by fraud, destroyed that fair representation of the people, by which alone they could be protected in their liberty, it was a direct breach of the contract of connection; and he could not scruple to say, that if a house of commons could be so debauched as to deny the right stated in the resolution, it was out of their own mouths conclusive evidence of the fact. He insisted that the claim of the catholics to that right, was directly within the spirit of the compact; and what have been the arguments advanced against the claim? One was an argument which, if founded in fact, would have some weight; it was that the catholics did not make the claim at all. Another argument was used, which he thought had as little foundation in fact, and was very easy to be reconciled to the other; it was that the catholics made their claim with insolence, and attempted to carry their object by intimidation. Let gentlemen take this fact if they please, in opposition to their own denial of it. The catholics then do make the demand; is their demand just? Is it just that they should be free? Is it just that they should have franchise? The justice is expressly admitted; why not given then? The
 answer

answer is, they demand it with insolence. Suppose that assertion, false as it is in fact, to be true, is it any argument with a public assembly, that any incivility of demand can cover the injustice of refusal. How low must that assembly be fallen, which can suggest as an apology for the refusal of an incontestible right, the answer which a bankrupt buck might give to the demand of his tailor; he will not pay the bill, because, "the rascal had dared to threaten his honour." As another argument against their claims, their principles had been maligned; the experience of a century was the refutation of the aspersion. The articles of their faith had been opposed by the learned doctor to the validity of their claims. Can their religion, said he, be an objection, where a total absence of all religion, where atheism itself is none? The learned doctor, no doubt, thought he was praising the mercy with which they had been governed, when he dilated upon their poverty; but can poverty be an objection in an assembly, whose humble and christian condescension shut not its doors even against the common beggar? He had traduced some of them by name; "Mr. Byrne and Mr. Keogh, and four or five ruffians from the Liberty:" but, said Mr. Curran, this is something better than frenzy: this is something better than the want of mere feeling and decorum; there could not, perhaps, be a better way of evincing a further and more important want of the Irish nation, the
want

want of a reformed representation of the people in parliament. For, what can impress the necessity of it more strongly upon the justice, upon the humanity, the indignation, and the shame of an assembly of Irish gentlemen, than to find the people so stripped of all share in the representation, as that the most respectful class of our fellow-citizens, men who had acquired wealth upon the noblest principle, the practice of commercial industry and integrity, could be made the butts of such idle and unavailing, such shameful abuse, without the possibility of having an opportunity to vindicate themselves; when men of that class can be exposed to the degradation of unanswered calumny, or the more bitter degradation of eleemosynary defence? Mr. Curran touched upon a variety of other topics, and concluded with the most forcible appeal to the minister, to the house, and to the country, upon the state of public affairs at home and abroad. He insisted that the measure was not, as it had been stated to be, a measure of mere internal policy; it was a measure that involved the question of right and wrong, of just and unjust: but it was more, it was a measure of the most absolute necessity, which could not be denied, and which could not safely be delayed. He could not, he said, foresee future events; he could not be appalled by the future, for he could not see it; but the present he could see, and he could not but see that it was big with danger; it might be

be the crisis of political life, or political extinction; it was a time fairly to state to the country, whether they had any thing, and what to fight for; whether they are to struggle for a connection of tyranny, or of privilege; whether the administration of England will let us condescend to forgive the insolence of her happier days; or whether, as the beams of her prosperity have wasted and consumed us, so even the frost of her adversity shall perform the deleterious effects of fire, and burn upon our privileges and our hopes for ever.

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

IN BEHALF OF

ARCHIBALD HAMILTON ROWAN, Esq.

FOR A LIBEL,

IN

THE COURT OF KING'S BENCH,

IRELAND,

ON THE 29TH OF JANUARY, 1794.

H B E H

1861

JOHN THOMAS GILKINSON

THE ATTORNEY GENERAL

THAT the reader may better understand several passages of the following speech, an abstract of the information filed by the attorney-general against Mr. Rowan is prefixed.

1861

THE COURT OF COMMONS

1861

THE ATTORNEY GENERAL

THE
SOCIETY
OF
UNITED IRISHMEN AT DUBLIN,
TO THE
VOLUNTEERS OF IRELAND.

WILLIAM DRENNAN, CHAIRMAN,
ARCHIBALD HAMILTON ROWAN, SECRETARY.

BE it remembered, that the right honourable Arthur Wolfe, attorney-general of our present sovereign lord the king, gives the court here to understand and be informed, that Archibald Hamilton Rowan, of the city of Dublin, Esq. being a person of a wicked and turbulent disposition, did on the sixteenth day of December, in the thirty-third year of the reign of our present sovereign lord George the third, publish a certain false, wicked, malicious, scandalous, and seditious libel, that is to say :

“ CITIZENS SOLDIERS,

“ YOU first took up arms to protect your
“ country from foreign enemies and from domes-
“ tic disturbance ; for the same purposes it now
“ becomes

“ becomes necessary that you should resume
 “ them ; a proclamation has been issued in Eng-
 “ land for embodying the militia, and a pro-
 “ clamation has been issued by the lord lieute-
 “ nant and council in Ireland, for repressing all
 “ seditious associations. In consequence of both
 “ these proclamations it is reasonable to appre-
 “ hend danger from abroad and danger at
 “ home ; from whence but from apprehended
 “ danger are these menacing preparations for
 “ war drawn through the streets of this capital ?
 “ from whence, if not to create that internal com-
 “ motion which was not found, to shake that
 “ credit which was not affected, to blast that
 “ volunteer honour which was hitherto inviolate,
 “ are those terrible suggestions and rumours, and
 “ whispers that meet us at every corner, and
 “ agitate at least our old men, our women, and
 “ our children ? whatever be the motive, or from
 “ whatever quarter it arises, alarm has arisen ;
 “ and you, volunteers of Ireland, are therefore
 “ summoned to arms at the instance of govern-
 “ ment, as well as by the responsibility attached
 “ to your character, and the permanent obliga-
 “ tions of your institution. We will not at this
 “ day condescend to quote authorities for the
 “ right of having and of using arms, but we will
 “ cry aloud, even amidst the storm raised by the
 “ witchcraft of a proclamation, that to your for-
 “ mation was owing the peace and protection of
 “ this island, to your relaxation has been owing
 “ its

“ its relapse into impotence and insignificance,
 “ to your renovation must be owing its future
 “ freedom and its present tranquillity : you are
 “ therefore summoned to arms, in order to pre-
 “ serve your country in that guarded quiet which
 “ may secure it from external hostility, and to
 “ maintain that internal regimen throughout the
 “ land, which, superseding a notorious police
 “ or a suspected militia, may preserve the bles-
 “ sings of peace by a vigilant preparation for
 “ war.—Citizens soldiers, to arms ! Take up the
 “ shield of freedom and the pledges of peace—
 “ peace, the motive and end of your virtuous
 “ institution—war, an occasional duty, ought
 “ never to be made an occupation ; every man
 “ should become a soldier in the defence of his
 “ rights ; no man ought to continue a soldier for
 “ offending the rights of others : the sacrifice of
 “ life in the service of our country is a duty much
 “ too honourable to be intrusted to mercenaries ;
 “ and at this time, when your country has, by
 “ public authority, been declared in danger, we
 “ conjure you by your interest, your duty, and
 “ your glory, to stand to your arms, and in
 “ spite of a police, in spite of a fencible militia,
 “ in virtue of two proclamations, to maintain
 “ good order in your vicinage, and tranquillity
 “ in Ireland : it is only by the military array of
 “ men in whom they confide, whom they have
 “ been accustomed to revere as the guardians of
 “ domestic peace, the protectors of their liber-
 “ ties

“ ties and lives, that the present agitation of the
 “ people can be stilled, that tumult and licenti-
 “ ousness can be repressed, obedience secured
 “ to existing law, and a calm confidence diffused
 “ through the public mind in the speedy resur-
 “ rection of a free constitution, of liberty and
 “ of equality,—words which we use for an op-
 “ portunity of repelling calumny, and of saying,
 “ that by liberty we never understood unlimited
 “ freedom, nor by equality the levelling of
 “ property or the destruction of subordination ;
 “ this is a calumny invented by that faction,
 “ or that gang, which misrepresents the king
 “ to the people, and the people to the king,
 “ traduces one half of the nation to cajole the
 “ other, and by keeping up mistrust and division
 “ wishes to continue the proud arbitrators of the
 “ fortune and fate of Ireland : liberty is the exer-
 “ cise of all our rights, natural and political, se-
 “ cured to us and our posterity by a real repre-
 “ sentation of the people ; and equality is the ex-
 “ tension of the constituent to the fullest dimen-
 “ sions of the constitution, of the elective fran-
 “ chise to the whole body of the people, to
 “ the end that government, which is collective
 “ power, maybe guided by collective will, and that
 “ legislation may originate from public reason,
 “ keep pace with public improvement, and ter-
 “ minate in public happiness. If our constitu-
 “ tion be imperfect, nothing but a reform in
 “ representation will rectify its abuses ; if it be
 “ perfect,

“ perfect, nothing but the same reform will per-
 “ petuate its blessings. We now address you
 “ as citizens, for to be citizens you became sol-
 “ diers, nor can we help wishing that all soldiers,
 “ partaking the passions and interest of the peo-
 “ ple, would remember, that they were once
 “ citizens, that seduction made them soldiers, but
 “ nature made them men. We address you with-
 “ out any authority save that of reason; and if
 “ we obtain the coincidence of public opinion,
 “ it is neither by force nor stratagem, for we
 “ have no power to terrify, no artifice to cajole,
 “ no fund to seduce; here we sit without mace
 “ or beadle, neither a mystery, nor a craft, nor
 “ a corporation; in four words lies all our power
 “ —universal emancipation and representative
 “ legislature—yet we are confident, that on the
 “ pivot of this principle, a convention, still less
 “ a society, still less a single man, will be able
 “ first to move and then to raise the world: we
 “ therefore wish for catholic emancipation with-
 “ out any modification, but still we consider this
 “ necessary enfranchisement as merely the portal
 “ to the temple of national freedom; wide as this
 “ entrance is, wide enough to admit three millions,
 “ it is narrow when compared to the capacity and
 “ comprehension of our beloved principle, which
 “ takes in every individual of the Irish nation,
 “ casts an equal eye over the whole island, em-
 “ braces all that think, and feels for all that suffer:
 “ the catholic cause is subordinate to our cause,
 “ and

“ and included in it; for, as united Irishmen, we
 “ adhere to no sect, but to society—to no cause,
 “ but christianity—to no party, but the whole
 “ people. In the sincerity of our souls do we
 “ desire catholic emancipation: but were it ob-
 “ tained to-morrow, to-morrow would we go on
 “ as we do to-day, in the pursuit of that reform,
 “ which would still be wanting to ratify their
 “ liberties as well as our own. For both these
 “ purposes it appears necessary that provincial
 “ conventions should assemble preparatory to the
 “ convention of the protestant people; the dele-
 “ gates of the catholic body are not justified in
 “ communicating with individuals or even bodies
 “ of inferior authority, and therefore an assem-
 “ bly of a similar nature and organization is ne-
 “ cessary to establish an intercourse of senti-
 “ ments, an uniformity of conduct, an united
 “ cause and an united nation; if a convention on
 “ the one part does not soon follow, and is not
 “ soon connected with that on the other, the
 “ common cause will split into the partial in-
 “ terest, the people will relapse into inattention
 “ and inertness, the union of affection and ex-
 “ ertion, will dissolve, and too probably some
 “ local insurrections, instigated by the malignity
 “ of our common enemy, may commit the cha-
 “ racter, and risque the tranquillity of the island,
 “ which can be obviated only by the influence
 “ of an assembly arising from, assimilated with
 “ the people, and whose spirit may be, as it
 “ were

“ were, knit with the soul of the nation: unless
 “ the sense of the protestant people be on their
 “ part as fairly collected, and as judicially di-
 “ rected, unless individual exertion consolidates
 “ into collective strength, unless the particles
 “ unite into one mass; we may, perhaps, serve
 “ some person or some party for a little, but the
 “ public not at all: the nation is neither insolent,
 “ nor rebellious, nor seditious; while it knows its
 “ rights, it is unwilling to manifest its powers;
 “ it would rather supplicate administration to
 “ anticipate revolution by well-timed reform, and
 “ to save their country in mercy to themselves.
 “ The fifteenth of February approaches, a day
 “ ever memorable in the annals of the country as
 “ the birth-day of new Ireland: let parochial
 “ meetings be held as soon as possible, let each
 “ parish return delegates, let the sense of Ulster
 “ be again declared from Dungannon on a day
 “ auspicious to union, peace, and freedom, and
 “ the spirit of the North will again become the
 “ spirit of the nation. The civil assembly ought
 “ to claim the attendance of the military associ-
 “ ations; and we have addressed you, citizens
 “ soldiers, on this subject, from the belief, that
 “ your body, uniting conviction with zeal, and
 “ zeal with activity, may have much influence
 “ over your countrymen, your relations, and
 “ friends. We offer only a general outline in the
 “ public, and, meaning to address Ireland, pre-
 “ sume not at present to fill up the plan, or pre-
 “ occupy

" occupy the mode of its execution. We have
 " thought it our duty to speak;—answer us by
 " actions; you have taken time for considera-
 " tion; fourteen long years have elapsed since
 " the rise of your associations; and in 1782 did
 " you imagine that in 1792 this nation would
 " still remain unrepresented? How many nations
 " in this interval have gotten the start of Ire-
 " land? How many of your countrymen have
 " sunk into the grave?"

A jury being sworn, the attorney-general
 stated the case on the part of the crown; the
 evidence being gone through on both sides, Mr.
 CURRAN spoke as follows:

Gentlemen of the jury. When I consider
 the period at which this prosecution is brought
 forward; when I behold the extraordinary safe-
 guard of armed soldiers resorted to,* no doubt
 for the preservation of peace and order; when
 I catch, as I cannot but do, the throb of public
 anxiety which beats from one end to the other
 of this hall; when I reflect on what may be the
 fate of a man of the most beloved personal cha-
 racter, of one of the most respected families of

* A few moments before Mr. Curran entered into his client's
 defence, a guard was brought into the court-house by the
 sheriff.

our country, himself the only individual of that family, I may almost say of that country, who can look to that possible fate with unconcern? Feeling as I do all these impressions, it is in the honest simplicity of my heart I speak, when I say, that I never rose in a court of justice with so much embarrassment, as upon this occasion.

If, gentlemen, I could entertain a hope of finding refuge for the disconcertion of my mind in the perfect composure of yours; if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgment undisturbed and your hearts at ease, I know I should form a most erroneous opinion of your character: I entertain no such chimerical hope; I form no such unworthy opinion; I expect not that your hearts can be more at ease than my own; I have no right to expect it; but I have a right to call upon you, in the name of your country, in the name of the living God, of whose eternal justice you are now administering that portion, which dwells with us on this side of the grave, to discharge your breasts as far as you are able, of every bias of prejudice or passion; that if my client be guilty of the offence charged upon him, you may give tranquility to the public by a firm verdict of conviction; or, if he be innocent, by as firm a verdict of acquittal; and that you will do this in defiance of the paltry artifices and senseless clamours that have

have been resorted to, in order to bring him to his trial with anticipated conviction. And, gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement, which you have just heard on the part of the prosecution. I know well the virtues and talents of the excellent person who conducts that prosecution.* I know how much he would disdain to impose on you by the trappings of office; but I also know how easily we mistake the lodgment which character and eloquence can make upon our feelings, for those impressions that reason and fact and proof only ought to work upon our understandings.

Perhaps, gentlemen, I shall act not unwisely in waving any further observation of this sort, and giving your minds an opportunity of growing cool and resuming themselves, by coming to a calm and uncoloured statement of mere facts, premising only to you, that I have it in strictest injunction from my client, to defend him upon facts and evidence only, and to avail myself of no technical artifice or subtlety that could withdraw his cause from the test of that enquiry which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

In the month of December 1792, Mr. Rowan was arrested on an information, charging him

* The late lord Kilwarden, then attorney-general.

with

with the offence for which he is now on his trial. He was taken before an honourable personage now on that bench, and admitted to bail.*

He remained a considerable time in this city, soliciting the present prosecution, and offering himself to a fair trial by a jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way, by sending up a bill of indictment to a grand jury.

I do not mean by this to say that informations *ex officio* are always oppressive or unjust; but I cannot but observe to you, that when a petty jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the king's prosecutor, that the accusation labours under a weakness of probability which it is difficult to assist. If the charge had no cause of dreading the light—if it was likely to find the sanction of a grand jury, it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to come forward in the ungracious form of an *ex officio* information.

If such a bill had been sent up and found, Mr. Rowan would have been tried at the next commission; but a speedy trial was not the wish of

* The honourable justice Downes.

his prosecutors. An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. Rowan offered to wave it, or consent to any amendment desired. No—that proposal could not be accepted—a trial must have followed. That information, therefore, was withdrawn, and a new one filed: that is, in fact, a third prosecution was instituted upon the same charge. This last was filed on the 8th day of last July.

Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your enquiry must be, whether Mr. Rowan is pursued as a criminal, or hunted down as a victim. It is not, therefore, by insinuation or circuitry, but it is boldly and directly that I assert, that oppression has been intended and practised upon him, and by those facts which I have stated, I am warranted in the assertion.

His demand, his entreaty to be tried was refused,—and why? A hue and cry was to be raised against him; the sword was to be suspended over his head; some time was necessary for the public mind to become heated by the circulation of artful clamours of anarchy and rebellion; these same clamours, which with more probability, but not more success, had been circulated before through England and Scotland. In this country the causes and the swiftness of their progress were as obvious, as their folly has since become, to every man
of

of the smallest observation I have been stopped myself, with, “ Good God, sir, have you heard the news?” “ No, sir; what?”—“ Why one French emissary was seen travelling through Connaught in a post-chaise, and scattering from the windows as he passed little doses of political poison, made up in square bits of paper—another was actually surprised in the fact of seducing our good people from their allegiance, by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregation of Irish peasants.”

Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain amongst us.—But time has also detected the imposture of these Cock-lane apparitions, and you cannot now, with your eyes open, give a verdict without asking your consciences this question; is this a fair and honest prosecution?—is it brought forward with the single view of vindicating public justice, and promoting public good? And here let me remind you, that you are not convened to try the guilt of a libel, affecting the personal character of any private man: I know no case in which a jury ought to be more severe, than where personal calumny is conveyed through a vehicle, which ought to be consecrated to public information; neither, on the other hand, can I conceive any case in which the firmness and the caution of a jury should be more exerted, than when a subject

is prosecuted for a libel on the state. The peculiarity of the British constitution, (to which in its fullest extent we have an undoubted right, however distant we may be from the actual enjoyment) and in which it surpasses every known government in Europe, is this ; that its only professed object is the general good, and its only foundation the general will ; hence the people have a right acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution that speaks louder than them all, to see whether abuses have been committed, and whether their properties and their liberties have been attended to as they ought to be.

This is a kind of subject which I feel myself overawed when I approach ; there are certain fundamental principles which nothing but necessity should expose to public examination ; they are pillars, the depth of whose foundation you cannot explore without endangering their strength ; but let it be recollected that the discussion of such topics should not be condemned in me, nor visited upon my client : the blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers ; and in order to that, the freedom of the press has been cherished by the law of England. In private defamation let it never be tolerated ; in wicked and wanton aspersion upon a good and honest administration

administration let it never be supported. Not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find in the detected falsehood of a licentious press a security and a credit, which it could never otherwise obtain.

I said a good government cannot be endangered; I say so again, for whether it is good or bad, it can never depend upon assertion: the question is decided by simple inspection: to try the tree look at its fruit; to judge of the government look at the people. What is the fruit of a good government? The virtue and happiness of the people. Do four millions of people in this country gather those fruits from that government, to whose injured purity, to whose spotless virtue and violated honour, this seditious and atrocious libeller is to be immolated upon the altar of the constitution? To you, gentlemen of the jury, who are bound by the most sacred obligation to your country and your God, to speak nothing but the truth, I put the question—Do the people of this country gather those fruits? Are they orderly, industrious, religious, and contented? Do you find them free from bigotry and ignorance, those inseparable concomitants of systematic oppression? Or, to try them by a test as unerring as any of the former, are they united? The period has now elapsed in which considerations of this extent would have been deemed improper to a jury; happily for those countries, the legislature

of each has lately changed, or, perhaps to speak more properly, revived and restored the law respecting trials of this kind. For the space of thirty or forty years a usage had prevailed in Westminster-hall, by which the judges assumed to themselves the decision of the question, whether libel or not; but the learned counsel for the prosecution are now obliged to admit that this is a question for the jury only to decide. You will naturally listen with respect to the opinion of the court, but you will receive it as a matter of advice, not as a matter of law; and you will give it credit, not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

Give me leave now to state to you the charge, as it stands upon the record :—It is, “ that Mr. Rowan, being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse among the subjects of this realm of Ireland, discontents, jealousies and suspicions of our lord the king and his government, and disaffection and disloyalty to the person and government of our said lord the king, and to raise very dangerous seditions and tumults within this kingdom of Ireland, and to draw the government of this kingdom into great scandal, infamy and disgrace, and to incite the subjects of our said lord the king to attempt, by force and violence, and with arms, to make alterations in the government,

“ state

“ state, and constitution of this kingdom, and to
 “ incite his majesty’s said subjects to tumult and
 “ anarchy, and to overturn the established con-
 “ stitution of this kingdom, and to overawe and
 “ intimidate the legislature of this kingdom by
 “ an armed force ;” did “ maliciously and sedi-
 “ tiously” publish the paper in question.

Gentlemen, without any observation of mine, you must see that this information contains a direct charge upon Mr. Rowan ; namely, that he did, with the intents set forth in the information, publish this paper ; so that here you have in fact two or three questions for your decision : First, the matter of fact of the publication ; namely, did Mr. Rowan publish that paper ? If Mr. Rowan did not in fact publish that paper, you have no longer any question on which to employ your minds : if you think that he was in fact the publisher, then and not till then arises the great and important subject to which your judgments must be directed. And that comes shortly and simply to this : Is the paper a libel ? and did he publish it with the intent charged in the information ? For whatever you may think of the abstract question, whether the paper be libellous or not, and of which paper it has not even been insinuated that he is the author, there can be no ground for a verdict against him, unless you also are persuaded that what he did was done, with a criminal design.

I wish, gentlemen, to simplify and not to perplex ;

plex ; I therefore say again, if these three circumstances conspire, that he published it—that it was a libel—and that it was published with the purposes alleged in the information, you ought unquestionably to find him guilty : if on the other hand, you do not find that all these circumstances concurred ;—if you cannot upon your oaths say that he published it ;—if it be not in your opinion a libel ;—and if he did not publish it with the intention alleged : I say, upon the failure of any one of these points, my client is entitled, in justice, and upon your oaths, to a verdict of acquittal.

Gentlemen, Mr .Attorney-general has thought proper to direct your attention to the state and circumstances of public affairs at the time of this transaction ; let me also make a few retrospective observations on a period, at which he has but slightly glanced ; I speak of the events which took place before the close of the American war.

You know, gentlemen, that France had espoused the cause of America, and we became thereby engaged in a war with that nation.

Heu nescia mens hominum futuri !

Little did that ill-fated monarch know that he was forming the first causes of those disastrous events, that were to end in the subversion of his throne, in the slaughter of his family, and the deluging of his country with the blood of his people

people. You cannot but remember that, at a time when we had scarcely a regular soldier for our defence; when the old and young were alarmed and terrified with apprehensions of descent upon our coasts; that Providence seemed to have worked a sort of miracle in our favour. You saw a band of armed men come forth at the great call of nature, of honour, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members, and send them armed into the field, to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period, without reviving those sentiments of tenderness and gratitude, which then beat in the public bosom: to recollect amidst what applause, what tears, what prayers, what benedictions, they walked forth amongst spectators, agitated by the mingled sensations of terror and of reliance, of danger and of protection, imploring the blessings of heaven upon their heads, and its conquest upon their swords. That illustrious, and adored, and *abused* body of men stood forward and assumed the title, which, I trust, the ingratitude of their country will never blot from its history, “THE VOLUNTEERS OF IRELAND.”

Give me leave now, with great respect, to put this question to you: Do you think the assembling of that glorious band of patriots was an insurrection? do you think the invitation to that assembling would have been sedition? they came
under

under no commission but the call of their country; unauthorized and unsanctioned, except by public emergency and public danger. I ask was that meeting insurrection or not? I put another question: If any man then had published a call on that body, and stated that war was declared against the state; that the regular troops were withdrawn; that our coasts were hovered round by the ships of the enemy; that the moment was approaching, when the unprotected feebleness of age and sex, when the sanctity of habitation would be disregarded and profaned by the brutal ferocity of a rude invader; if any man had then said to them, "Leave your industry for a while, that you may return to it again, and come forth in arms for the public defence." I put the question boldly to you—It is not the case of the volunteers of that day; it is the case of my client at this hour, which I put to you—Would that call have been then pronounced in a court of justice, or by a jury on their oaths, a criminal and seditious invitation to insurrection? If it would not have been so then, upon what principle can it be so now? What is the force and perfection of the law? It is the permanency of the law; it is, that whenever the fact is the same, the law is also the same; it is, that the law remains a written, monumented and recorded letter, to pronounce the same decision, upon the same facts whenever they shall arise. I will not affect to conceal it: you know there has been artful, ungrateful, and blasphemous clamour raised against these illustrious characters,

characters, the saviours of the kingdom of Ireland. Having mentioned this, let me read a few words of the paper alleged to be criminal. “ You
 “ first took up arms to protect your country from
 “ foreign enemies, and from domestic disturb-
 “ ance. For the same purposes it now becomes
 “ necessary that you should resume them.”

I should be the last man in the world to impute any want of candour to the right honourable gentleman, who has stated the case on behalf of the prosecution: but he has certainly fallen into a mistake, which, if not explained, might be highly injurious to my client. He supposed that this publication was not addressed to those ancient volunteers, but to new combinations of them, formed upon new principles, and actuated by different motives. You have the words to which this construction is imputed upon the record; the meaning of his mind can be collected only from those words which he has made use of to convey it. The guilt imputable to him can only be inferred from the meaning ascribable to those words. Let his meaning then be fairly collected by resorting to them. Is there a foundation to suppose that this address was directed to any such body of men, as has been called a banditti, (with what justice it is unnecessary to inquire,) and not to the old volunteers?

As to the sneer at the words *citizens soldiers*, I should feel that I was treating a very respected friend

friend with an insidious and unmerited unkindness, if I affected to expose it by any gravity of refutation. I may, however, be permitted to observe, that those who are supposed to have disgraced this expression by adopting it, have taken it from the idea of the British constitution, “that
 “no man in becoming a soldier ceases to be a
 “citizen.” Would to God, all enemies as they are, that that unfortunate people had borrowed more from that sacred source of liberty and virtue; and would to God, for the sake of humanity, that they had preserved even the little they did borrow! If ever there could be an objection to that appellation, it must have been strongest when it was first assumed.* To that period the writer manifestly alludes; he addresses “those
 “who first took up arms:” “You first took up
 “arms to protect your country from foreign enemies and from domestic disturbance. For the
 “same purposes it now becomes necessary that
 “you should resume them.” Is this applicable to those who had never taken up arms before? “A proclamation,” says this paper, “has been
 “issued in England for embodying the militia,
 “and a proclamation has been issued by the lord
 “lieutenant and council of Ireland, for repressing all seditious associations. In consequence
 “of both these proclamations, it is reasonable
 “to apprehend danger from abroad, and danger
 “at home.” God help us, from the situation of

* In the resolutions and addresses of the old volunteers, at and prior to 1783, the terms *citizens soldiers*, and *citizen soldiery*, were no uncommon appellations.

Europe at that time; we were threatened with too probable danger from abroad, and I am afraid it was not without foundation we were told of our having something to dread at home.

I find much abuse has been lavished on the disrespect with which the proclamation is treated, in that part of the paper alleged to be a libel. To that my answer for my client is short: I do conceive it competent to a British subject if he thinks that a proclamation has issued for the purpose of raising false terrors; I hold it to be not only the privilege, but the duty of a citizen, to set his countrymen right, with respect to such misrepresented danger; and until a proclamation in this country shall have the force of law, the reason and grounds of it are surely at least questionable by the people. Nay, I will go farther,—if an actual law had passed, receiving the sanction of the three estates, if it be exceptionable in any matter, it is warrantable to any man in the community to state, in a becoming manner, his ideas upon it. And I should be at a loss to know, if the positive laws of Great Britain are thus questionable, upon what grounds the proclamation of an Irish government should not be open to the animadversion of Irish subjects.

“Whatever be the motive, or from whatever quarter it arises,” says this paper, “alarm has arisen.” Gentlemen, do you not know that to be fact? It has been stated by the attorney-general

general, and most truly, that the most gloomy apprehensions were entertained by the whole country. “ You volunteers of Ireland are therefore
 “ summoned to arms at the instance of govern-
 “ ment, as well as by the responsibility attached
 “ to your character, and the permanent obliga-
 “ tions of your institution.” I am free to confess, if any man, assuming the liberties of a British subject to question public topics, should, under the mask of that privilege, publish a proclamation inviting the profligate and seditious, those in want, and those in despair, to rise up in arms to overawe the legislature, to rob us of whatever portion of the blessing of a free government we possess; I know of no offence involving greater enormity. But that, gentlemen, is the question you are to try. If my client acted with an honest mind and fair intention, and having, as he believed, the authority of government to support him in the idea that danger was to be apprehended, did apply to that body of so known and so revered a character, calling upon them by their former honour, the principles of their glorious institution, and the great stake they possessed in their country:—if he interposed, not upon a fictitious pretext, but a real belief of actual and imminent danger, and that their arming at that critical moment was necessary to the safety of their country; his intention was not only innocent, but highly meritorious. It is a question, gentlemen, upon which you only can decide; it is for you to say, whether it was criminal

minal in the defendant to be misled, and whether he is to fall a sacrifice to the prosecution of that government by which he was so deceived. I say again, gentlemen, you can look only to his words as the interpreters of his meaning; and to the state and circumstances of his country, as he was made to believe them, as the clue to his intention. The case then, gentlemen, is shortly and simply this: a man of the first family, and fortune, and character, and property among you, reads a proclamation, stating the country to be in danger from abroad and at home; and thus alarmed—thus upon the authority of the prosecutor alarmed, applies to that august body, before whose awful presence sedition must vanish and insurrection disappear. You must surrender I hesitate not to say, your oaths to unfounded assertion, if you can submit to say, that such an act, of such a man, so warranted, is a wicked and seditious libel. If he was a dupe, let me ask you, who was the impostor? I blush and shrink with shame and detestation from that meanness of dupery and servile complaisance, which could make that dupe a victim to the accusation of impostor.

You perceive, gentlemen, that I am going into the merits of this publication, before I apply myself to the question which is first in order of time, namely, whether the publication in point of fact, is to be ascribed to Mr. Rowan or not. I have been unintentionally led into this violation of order

der. I should effect no purpose of either brevity or clearness, by returning to the more methodical course of observation. I have been naturally drawn from it by the superior importance of the topic I am upon, namely, the merit of the publication in question.

This publication, if ascribed at all to Mr. Rowan, contains four distinct subjects: the first, the invitation to the volunteers to arm; upon that I have already observed: but those that remain are surely of much importance, and no doubt are prosecuted as equally criminal. The paper next states the necessity of a reform in parliament: it states, thirdly, the necessity of an emancipation of the catholic inhabitants of Ireland; and as necessary to the atchievement of all these objects, does, fourthly, state the necessity of a general delegated convention of the people.

It has been alleged that Mr. Rowan intended by this publication to excite the subjects of this country to effect an alteration in the form of your constitution. And, here, gentlemen, perhaps, you may not be unwilling to follow a little farther than Mr. Attorney-general has done the idea of a late prosecution in Great Britain upon the subject of a public libel. It is with peculiar fondness I look to that country for solid principles of constitutional liberty and judicial example. You have been pressed in no small degree with the manner in which this publication marks the different orders
of

of our constitution, and comments upon them. Let me shew you what boldness of animadversion on such topics is thought justifiable in the British nation, and by a British jury. I have in my hand the report of the trial of the printers of the Morning Chronicle, for a supposed libel against the state, and of their acquittal: let me read to you some passages from that publication, which a jury of Englishmen were in vain called upon to brand with the name of libel.

“ Claiming it as our indefeisible right to associate together, in a peaceable and friendly manner, for the communication of thoughts, the formation of opinions, and to promote the general happiness, we think it unnecessary to offer any apology for inviting you to join us in this manly and benevolent pursuit; the necessity of the inhabitants of every community endeavouring to procure a true knowledge of their rights, their duties, and their interests, will not be denied, except by those who are the slaves of prejudice, or interested in the continuation of abuses. As men who wish to aspire to the title of freemen, we totally deny the wisdom and the humanity of the advice, to approach the defects of government with ‘ pious awe and trembling solicitude.’ What better doctrine could the pope or the tyrants of Europe desire? We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause which will
 “ not

“ not bear such a scrutiny must be systemati-
 “ cally or practically bad. We are sensible
 “ that those who are not friends to the general
 “ good have attempted to inflame the public
 “ mind with the cry of ‘ Danger,’ whenever men
 “ have associated for discussing the principles of
 “ government; and we have little doubt but such
 “ conduct will be pursued in this place; we would
 “ therefore caution every honest man, who has
 “ really the welfare of the nation at heart, to
 “ avoid being led away by the prostituted cla-
 “ mours of those who live on the sources of cor-
 “ ruption. We pity the fears of the timorous,
 “ and we are totally unconcerned respecting the
 “ false alarms of the venal.—

—“ We view with concern the frequency of
 “ wars.—We are persuaded that the interests of
 “ the poor can never be promoted by accession of
 “ territory, when bought at the expence of their
 “ labour and blood; and we must say, in the lan-
 “ guage of a celebrated author—‘ We, who are
 “ only the people, but who pay for wars with our
 “ substance and our blood, will not cease to tell
 “ kings,’ or governments, ‘ that to them alone
 “ wars are profitable; that the true and just con-
 “ quests are those which each makes at home, by
 “ comforting the peasantry, by promoting agri-
 “ culture and manufactories, by multiplying men
 “ and the other productions of nature; that then it
 “ is that kings may call themselves the image of
 “ God

“ God, whose will is perpetually directed to the
 “ creation of new beings. If they continue to
 “ make us fight and kill one another in uniform,
 “ we will continue to write and speak, until na-
 “ tions shall be cured of this folly.’—We are cer-
 “ tain our present heavy burthens are owing, in
 “ a great measure, to cruel and impolitic wars,
 “ and therefore we will do all on our part, as
 “ peaceable citizens who have the good of the
 “ community at heart, to enlighten each other,
 “ and protest against them.

“ The present state of the representation of
 “ the people calls for the particular attention of
 “ every man who has humanity sufficient to feel
 “ for the honour and happiness of his country;
 “ to the defects and corruptions of which we are
 “ inclined to attribute unnecessary wars, &c. &c.
 “ We think it a deplorable case when the poor
 “ must support a corruption which is calculated
 “ to oppress them; when the labourer must give
 “ his money to afford the means of preventing
 “ him having a voice in its disposal; when the
 “ lower classes may say,—We give you our
 “ money, for which we have toiled and sweat, and
 “ which would save our families from cold and
 “ hunger; but we think it more hard that there
 “ is nobody whom we have delegated, to see that
 “ it is not improperly and wickedly spent; we
 “ have none to watch over our interests; the
 “ rich only are represented.”—

—“ An equal and uncorrupt representation
 “ would, we are persuaded, save us from heavy
 “ expences, and deliver us from many oppres-
 “ sions; we will therefore do our duty to pro-
 “ cure this reform, which appears to us of the
 “ utmost importance.

“ In short, we see, with the most lively con-
 “ cern, an army of placemen, pensioners, &c.
 “ fighting in the cause of corruption and preju-
 “ dice, and spreading the contagion far and
 “ wide.—

—“ We see with equal sensibility the present
 “ outcry against reforms, and a proclamation
 “ (tending to cramp the liberty of the press, and
 “ discredit the true friends of the people), re-
 “ ceiving the support of numbers of our country-
 “ men.—

“ We see burthens multiplied—the lower
 “ classes sinking into poverty, disgrace, and ex-
 “ cesses, and the means of those shocking
 “ abuses increased for the purposes of revenue.—

—“ We ask ourselves—‘ Are we in England?’
 “ —Have our forefathers fought, bled, and con-
 “ quered for liberty? And did they not think that
 “ the fruits of their patriotism would be more
 “ abundant in peace, plenty, and happiness?—

—“ Is the condition of the poor never to be
 “ improved? Great Britain must have arrived at
 “ the

“ the highest degree of national happiness and
 “ prosperity, and our situation must be too good
 “ to be mended, or the present outcry against
 “ reforms and improvements is inhuman and cri-
 “ minal. But we hope our condition will be
 “ speedily improved, and to obtain so desirable
 “ a good is the object our present association :
 “ an union founded on principles of benevolence
 “ and humanity ; disclaiming all connexion
 “ with riots and disorder, but firm in our pur-
 “ pose, and warm in our affections for liberty.

“ Lastly—We invite the friends of freedom
 “ throughout Great Britain to form similar socie-
 “ ties, and to act with unanimity and firmness,
 “ till the people be too wise to be imposed upon ;
 “ and their influence in the government be com-
 “ mensurate with their dignity and importance :

“ THEN SHALL WE BE FREE AND HAPPY.”

Such, gentlemen, is the language which a sub-
 ject of Great Britain thinks himself warranted to
 hold, and upon such language has the corrobo-
 rating sanction of a British jury been stamped by
 a verdict of acquittal. Such was the honest and
 manly freedom of publication, in a country too
 where the complaint of abuses has not half the
 foundation it has here. I said I loved to look to
 England for principles of judicial example ; I
 cannot but say to you that it depends on your
 spirit, whether I shall look to it hereafter with

sympathy or with shame. Be pleased, now, gentlemen, to consider whether the statement of the imperfection in your representation has been made with a desire of inflaming an attack upon the public tranquillity, or with an honest purpose of procuring a remedy for an actually existing grievance.

It is impossible not to revert to the situation of the times; and let me remind you, that whatever observations of this kind I am compelled thus to make in a court of justice, the uttering of them in this place is not imputable to my client, but to the necessity of defence imposed upon him by this extraordinary prosecution.

— Gentlemen, the representation of our people is the vital principle of their political existence; without it they are dead, or they live only to servitude; without it there are two estates acting upon and against the third, instead of acting in co-operation with it; without it, if the people are oppressed by their judges, where is the tribunal to which their judges can be amenable? without it, if they are trampled upon and plundered by a minister, where is the tribunal to which the offender shall be amenable? without it, where is the ear to hear, or the heart to feel, or the hand to redress their sufferings? Shall they be found, let me ask you, in the accursed bands of imps and minions that bask in their disgrace, and tatten upon their spoils, and flourish upon their ruin?

ruin? But let me not put this to you as a merely speculative question. It is a plain question of fact: rely upon it, physical man is every where the same; it is only the various operation of moral causes that gives variety to the social or individual character and condition. How otherwise happens it, that modern slavery looks quietly at the despot, on the very spot where Leonidas expired? The answer is, Sparta has not changed her climate, but she has lost that government, which her liberty could not survive.

I call you, therefore, to the plain question of fact. This paper recommends a reform in parliament: I put that question to your consciences; do you think it needs that reform? I put it boldly and fairly to you, do you think the people of Ireland are represented as they ought to be?—Do you hesitate for an answer? If you do, let me remind you, that until the last year three millions of your countrymen have by the express letter of the law been excluded from the reality of actual, and even from the phantom of virtual representation. Shall we then be told that this is only the affirmation of a wicked and seditious incendiary? If you do not feel the mockery of such a charge, look at your country; in what state do you find it? Is it in a state of tranquillity and general satisfaction? These are traces by which good are ever to be distinguished from bad governments, without any very minute enquiry or speculative refinement.—Do you feel that a veneration for
the

the law, a pious and humble attachment to the constitution, form the political morality of your people? Do you find that comfort and competency among your people, which are always to be found where a government is mild and moderate; where taxes are imposed by a body, who have an interest in treating the poorer orders with compassion, and preventing the weight of taxation from pressing sore upon them?

Gentlemen, I mean not to impeach the state of your representation, I am not saying that it is defective, or that it ought to be altered or amended; nor is this a place for me to say, whether I think that three millions of the inhabitants of a country, whose whole number is but four, ought to be admitted to any efficient situation in the state. It may be said, and truly, that these are not questions for either of us directly to decide; but you cannot refuse them some passing consideration at least; when you remember that on this subject the real question for your decision is, whether the allegation of a defect in your constitution is so utterly unfounded and false, that you can ascribe it only to the malice and perverseness of a wicked mind, and not to the innocent mistake of an ordinary understanding;—whether it may not be mistake; whether it can be only sedition.

And here, gentlemen, I own I cannot but regret, that one of our countrymen should be criminally pursued for asserting the necessity of
a reform,

areform, at the very moment, when that necessity seems admitted by the parliament itself; that this unhappy reform shall at the same moment be a subject of legislative discussion, and criminal prosecution. Far am I from imputing any sinister design to the virtue or wisdom of our government; but who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information!

I am the more forcibly impressed by this consideration, when I consider, that when this information was first put on the file, the subject was transiently mentioned in the house of commons. Some circumstances retarded the progress of the inquiry there, and the progress of the information was equally retarded here. On the first day of this session, you all know, that subject was again brought forward in the house of commons, and, as if they had slept together, this prosecution was also revived in the court of king's-bench; and that before a jury, taken from a pannel partly composed of those very members of parliament, who, in the house of commons, must debate upon this subject as a measure of public advantage, which they are here called upon to consider as a public crime.*

This paper, gentlemen, insists upon the necessity of emancipating the catholics of Ireland, and

* Among the names on the pannel were several members of parliament,

that is charged as part of the libel. If they had waited another year, if they had kept this prosecution impending for another year, how much would remain for a jury to decide upon, I should be at a loss to discover. It seems as if the progress of public information was eating away the ground of the prosecution. Since the commencement of the prosecution, this part of the libel has unluckily received the sanction of the legislature. In that interval our catholic brethren have obtained that admission, which it seems it was a libel to propose; in what way to account for this, I am really at a loss. Have any alarms been occasioned by the emancipation of our catholic brethren? has the bigoted malignity of any individuals been crushed? or has the stability of the government, or that of the country been weakened; or is one million of subjects stronger than four millions? Do you think that the benefit they received should be poisoned by the sting of vengeance? If you think so, you must say to them, "you have demanded emancipation and you have got it; but we abhor your persons, we are outraged at your success and we will stigmatize by a criminal prosecution the adviser of that relief which you have obtained from the voice of your country." I ask you, do you think, as honest men, anxious for the public tranquillity, conscious that there are wounds not yet completely cicatrized, that you ought to speak this language at this time, to men who are too much disposed to think that in this very emancipation they have been saved from

from their own parliament by the humanity of their sovereign? Or do you wish to prepare them for the revocation of these improvident concessions? Do you think it wise or humane at this moment to insult them, by sticking up in a pillory the man who dared to stand forth as their advocate? I put it to your oaths; do you think, that a blessing of that kind, that a victory obtained by justice over bigotry and oppression, should have a stigma cast upon it by an ignominious sentence upon men bold and honest enough to propose that measure? to propose the redeeming of religion from the abuses of the church, the reclaiming of three millions of men from bondage, and giving liberty to all who had a right to demand it; giving, I say, in the so much censured words of this paper, giving "UNIVERSAL EMANCIPATION!" I speak in the spirit of the British law, which makes liberty commensurate with and inseparable from British soil; which proclaims even to the stranger and sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the Genius of UNIVERSAL EMANCIPATION. No matter in what language his doom may have been pronounced;—no matter what complexion incompatible with freedom, an Indian or an African sun may have burnt upon him;—no matter in what disastrous battle his liberty may have been cloven down;—no matter with what solemnities he may have been devoted upon the altar of slavery;

very; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains, that burst from around him, and he stands redeemed, regenerated, and disenthralled, by the irresistible Genius of UNIVERSAL EMANCIPATION.

[Here Mr. Curran was interrupted by a sudden burst of applause from the court and hall, which was repeated for a considerable length of time; silence being at length restored, he proceeded.]

Gentlemen, I am not such a fool, as to ascribe any effusion of this sort to any merit of mine. It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer! What you hear is but the testimony which nature bears to her own character; it is the effusion of her gratitude to that power, which stampt that character upon her.

And, permit me to say, that if my client had occasion to defend his cause by any mad or drunken appeals to extravagance or licentiousness, I trust in God I stand in that situation, that, humble as I am, he would not have resorted to me to be his advocate. I was not recommended to his choice by any connection of principle or party, or even private friendship; and saying this, I cannot but add, that I consider not to be acquainted

acquainted with such a man as Mr. Rowan, a want of personal good fortune. But upon this great subject of reform and emancipation, there is a latitude and boldness of remark, justifiable in the people, and necessary to the defence of Mr. Rowan, for which the habits of professional studies, and technical adherence to established forms, have rendered me unfit. It is however my duty, standing here as his advocate, to make some few observations to you, which I conceive to be material.

Gentlemen, you are sitting in a country which has a right to the British constitution, and which is bound by an indissoluble union with the British nation. If you were now even at liberty to debate upon that subject; if you even were not by the most solemn compacts, founded upon the authority of your ancestors and of yourselves, bound to that alliance, and had an election now to make; in the present unhappy state of Europe, if you had been heretofore a stranger to Great Britain, you would now say, we will enter into society and union with you;

Una salus ambobus erit, commune periculum.

But to accomplish that union, let me tell you, you must learn to become like the English people. It is vain to say, you will protect their freedom, if you abandon your own. The pillar whose base has no foundation, can give no support

port to the dome under which its head is placed; and if you profess to give England that assistance which you refuse to yourselves, she will laugh at your folly, and despise your meanness and insincerity. Let us follow this a little further, I know you will interpret what I say with the candour in which it is spoken. England is marked by a natural avarice of freedom, which she is studious to engross and accumulate, but most unwilling to impart; whether from any necessity of her policy, or from her weakness, or from her pride, I will not presume to say, but so is the fact; you need not look to the east, nor to the west, you need only look to yourselves.

In order to confirm this observation, I would appeal to what fell from the learned counsel for the crown, “that notwithstanding the alliance
“subsisting for two centuries past between the
“two countries, the date of liberty in one goes
“no farther back than the year 1784.”

If it acquired additional confirmation, I should state the case of the invaded American, and the subjugated Indian, to prove that the policy of England has ever been to govern her connexions more as colonies than as allies; and it must be owing to the great spirit indeed of Ireland if she shall continue free. Rely upon it she will ever have to hold her course against an adverse current; rely upon it, if the popular spring does not continue strong and elastic, a short interval
of

of debilitated nerve and broken force will send you down the stream again, and reconsign you to the condition of a province. //

If such should become the fate of your constitution, ask yourselves what must be the motive of your government? It is easier to govern a province by a faction, than to govern a co-ordinate country by co-ordinate means. I do not say it is now, but it will always be thought easiest by the managers of the day, to govern the Irish nation by the agency of such a faction, as long as this country shall be found willing to let her connexion with Great Britain be preseeded only by her own degradation. In such a precarious and wretched state of things, if it shall ever be found to exist, the true friend of Irish liberty, and British connexion, will see, that the only means of saving both must be, as lord Chatham expressed it, “the infusion of new health and blood into the constitution.” He will see how deep a stake each country has in the liberty of the other; he will see what a bulwark he adds to the common cause, by giving England a co-ordinate, and co-interested ally, instead of an oppressed, enfeebled and suspected dependant; he will see how grossly the credulity of Britain is abused by those, who make her believe that her interest is promoted by our depression; he will see the desperate precipice to which she approaches by such conduct, and with an animated and generous piety he will labour to avert her danger.

But

But, gentlemen of the jury, what is likely to be his fate? The interest of the sovereign must be for ever the interest of his people; because his interest lives beyond his life:—It must live in his fame, it must live in the tenderness of his solicitude for an unborn posterity;—it must live in that heart-attaching bond by which millions of men have united the destinies of themselves and their children with his, and call him by the endearing appellation of KING AND FATHER OF HIS PEOPLE.

But what can be the interest of such a government as I have described? Not the interest of the king, not the interest of the people; but the sordid interest of the hour; the interest in deceiving the one, and in oppressing and defaming the other: the interest of unpunished rapine and unmerited favour: that odious and abject interest, that prompts them to extinguish public spirit in punishment or in bribe, and to pursue every man, even to death, who has sense to see, and integrity and firmness enough to abhor and to oppose them. What therefore, I say, will be the fate of the man, who embarks in an enterprise of so much difficulty and danger? I will not answer it.—Upon that hazard has my client put every thing that can be dear to man;—his fame, his fortune, his person, his liberty, and his children; but with what event your verdict only can answer, and to that I refer your country.

There

There is a fourth point remaining. Says this paper, “ For both these purposes, it appears necessary, that provincials convention should assemble preparatory to the convention of the protestant people. The delegates of the catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause, and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest ; the people will relax into inaction and inertness, the union of affection and exertion will dissolve, and too probably some local insurrection, instigated by the malignity of our common enemy, may commit the character and risque the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were knit with the soul of the nation, unless the sense of the protestant people be on their part as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into one mass, we may perhaps serve some person or some party for a little, but the public not at all : the nation is neither insolent, nor rebellious, nor seditious ; while it knows its rights, it is unwilling

“willing to manifest its powers; it would rather
 “supplicate administration to anticipate revolution by well-timed reform, and to save their
 “country in mercy to themselves.”

Gentlemen, it is with something more than common reverence, it is with a species of terror that I am obliged to tread this ground.—But what is the idea, put in the strongest point of view?—We are willing not to manifest our powers, but to supplicate administration to anticipate revolution, that the legislature may save the country in mercy to itself.

Let me suggest to you, gentlemen, that there are some circumstances, which have happened in the history of this country, that may better serve as a comment upon this part of the case than any I can make. I am not bound to defend Mr. Rowan as to the truth or wisdom of the opinions he may have formed. But if he did really conceive the situation of the country such, as that the not redressing her grievances might lead to a convulsion, and of such an opinion not even Mr. Rowan is answerable here for the wisdom, much less shall I insinuate any idea of my own upon so awful a subject; but if he did so conceive the fact to be, and acted from the fair and honest suggestion of a mind anxious for the public good, I must confess, gentlemen, I do not know in what part of the British constitution to find the principle of his criminality.

But

But, be pleased further to consider, that he cannot be understood to put the fact on which he argues on the authority of his assertion. The condition of Ireland was as open to the observation of every other man, as to that of Mr. Rowan; what then does this part of the publication amount to? In my mind, simply to this: The nature of oppression in all countries is such, that, although it may be borne to a certain degree, it cannot be borne beyond that degree. You find that exemplified in Great Britain; you find the people of England patient to a certain point, but patient no longer. That infatuated monarch, James II. experienced this. The time did come, when the measure of popular sufferings and popular patience was full; when a single drop was sufficient to make the waters of bitterness to overflow. I think this measure in Ireland is brimful at present; I think the state of the representation of the people in parliament is a grievance; I think the utter exclusion of three millions of people is a grievance of that kind that the people are not likely long to endure, and the continuation of which may plunge the country into that state of despair which wrongs exasperated by perseverance never fail to produce. But to whom is even this language addressed? Not to the body of the people on whose temper and moderation, if once excited, perhaps not much confidence could be placed; but to that authoritative body, whose influence and power would have restrained the

excesses of the irritable and tumultuous; and for that purpose expressly does this publication address the volunteers.—We are told that we are in danger; I call upon you, the great constitutional saviours of Ireland, to defend the country to which you have given political existence, and to use whatever sanction your great name, your sacred character, and the weight you have in the community, must give you to repress wicked designs, if any there are. We feel ourselves strong. The people are always strong; the public chains can only be rivetted by the public hands. Look to those devoted regions of southern despotism; behold the expiring victim on his knees, presenting the javelin reeking with his blood to the ferocious monster who returns it into his heart. Call not that monster the tyrant: he is no more than the executioner of that inhuman tyranny, which the people practice upon themselves, and of which he is only reserved to be a later victim than the wretch he has sent before. Look to a nearer country, where the sanguinary characters are more legible; whence you almost hear the groans of death and torture. Do you ascribe the rapine and murder in France to the few names that we are execrating here? or do you not see that it is the phrensy of an infuriated multitude, abusing its own strength, and practising those hideous abominations upon itself. Against the violence of this strength, let your virtue and influence be our safeguard.—

What

What criminality, gentlemen of the jury, can you find in this? what at any time? but I ask you, peculiarly at this momentous period, what guilt can you find in it? My client saw the scene of horror and blood which covers almost the face of Europe: he feared that causes, which he thought similar, might produce similar effects, and he seeks to avert those dangers by calling the united virtue and tried moderation of the country into a state of strength and vigilance. Yet this is the conduct which the prosecution of this day seeks to punish and stigmatise; and this is the language for which this paper is reprobated to-day, as tending to turn the hearts of the people against their sovereign, and inviting them to overturn the constitution.

Let us now gentlemen, consider the concluding part of this publication. It recommends a meeting of the people to deliberate on constitutional methods of redressing grievances. Upon this subject I am inclined to suspect that I have in my youth taken up crude ideas, not founded, perhaps, in law; but I did imagine, that when the bill of rights restored the right of petitioning for the redress of grievances, it was understood that the people might boldly state among themselves that grievances did exist; I did imagine it was understood that the people might lawfully assemble themselves in such manner as they might deem most orderly and decorous. I thought I had collected it from the greatest luminaries of the law. The power of petitioning seemed to me to imply the

right

right of assembling for the purpose of deliberation. The law requiring a petition to be presented by a limited number, seemed to me to admit that the petition might be prepared by any number whatever, provided, in doing so, they did not commit any breach or violation of the public peace. I know that there has been a law passed in the Irish parliament of last year, which may bring my former opinion into a merited want of authority. The law declares that no body of men may delegate a power to any smaller number, to act, think, or petition for them. If that law had not passed I should have thought that the assembling by a delegate convention was recommended, in order to avoid the tumult and disorder of a promiscuous assembly of the whole mass of the people. I should have conceived before that act, that any law to abridge the orderly appointment of the few to consult for the interest of the many, and thus force the many to consult by themselves, or not at all, would in fact be a law not to restrain but to promote insurrection. But that law has spoken, and my error must stand corrected.

Of this, however, let me remind you, you are to try this part of the publication by what the law was then, not by what it is now. How was it understood until last session of parliament? You had both in England and Ireland, for the last ten years, these delegated meetings. The volunteers of Ireland, in 1783, met by delegation; they

they framed a plan of parliamentary reform ; they presented it to the representative wisdom of the nation ; it was not received ; but no man ever dreamed that it was not the undoubted right of the subject to assemble in that manner. They assembled by delegation at Dungannon, and to shew the idea then entertained of the legality of their public conduct, that same body of volunteers was thanked by both houses of parliament, and their delegates most graciously received at the throne. The other day, you had delegated representatives of the catholics of Ireland, publicly elected by the members of that persuasion, and sitting in convention in the heart of your capital, carrying on an actual treaty with the existing government, and under the eye of your own parliament, which was then assembled ; you have seen the delegates from that convention carry the complaints of their grievances to the foot of the throne ; from whence they brought back to that convention the auspicious tidings of that redress which they had been refused at home.

Such, gentlemen, have been the means of popular communication and discussion, which until the last session have been deemed legal in this country ; as happily for the sister kingdom, they are yet considered there.

I do not complain of this act as any infraction of popular liberty ; I should not think it becoming in me to express any complaint against a law,
when

when once become such. I observe only, that one mode of popular deliberation is thereby taken utterly away, and you are reduced to a situation in which you never stood before. You are living in a country, where the constitution is rightly stated to be only ten years old; where the people have [not the ordinary rudiments of education. It is a melancholy story, that the lower orders of the people here have less means of being enlightened than the same class of people in any other country. If there be no means left by which public measures can be canvassed, what will be the consequence? Where the press is free and discussion unrestrained, the mind, by the collision of intercourse, gets rid of its own asperities, a sort of insensible perspiration takes place in the body politic, by which those acrimonies, which would otherwise fester and inflame, are quietly dissolved and dissipated. But now, if any aggregate assembly shall meet, they are censured; if a printer publishes their resolutions, he is punished. Rightly to be sure in both cases, for it has been lately done. If the people say, let us not create tumult, but meet in delegation, they cannot do it; if they are anxious to promote parliamentary reform in that way, they cannot do it; the law of the last session has for the first time declared such meetings to be a crime. What then remains? The liberty of the press ONLY; that sacred palladium, which no influence, no power, no minister, no government, which nothing but
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the depravity, or folly, or corruption of a jury, can ever destroy.—And what calamities are the people saved from by having public communication left open to them? I will tell you, gentlemen, what they are saved from, and what the government is saved from; I will tell you also to what both are exposed by shutting up that communication. In one case sedition speaks aloud, and walks abroad; the demagogue goes forth; the public eye is upon him; he frets his busy hour upon the stage; but soon either weariness, or bribe or punishment, or disappointment, bears him down, or drives him off, and he appears no more. In the other case, how does the work of sedition go forward? Night after night the muffled rebel steals forth in the dark, and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the flame. If you doubt of the horrid consequences of suppressing the effusion even of individual discontent, look to those enslaved countries where the protection of despotism is supposed to be secured by such restraints. Even the person of the despot there is never in safety. Neither the fears of the despot, nor the machinations of the slave have any slumber, the one anticipating the moment of peril, the other watching the opportunity of aggression. The fatal crisis is equally a surprise upon both; the decisive instant is precipitated without warning, by folly on the one side, or by phrensy on the other, and there is no notice of the treason
till

till the trait, or acts. In those unfortunate countries (one cannot read it without horror) there are officers, whose province it is, to have the water, which is to be drunk by their rulers, sealed up in bottles, lest some wretched miscreant should throw poison into the draught.

But, gentlemen, if you wish for a nearer and more interesting example, you have it in the history of your own revolution; you have it at that memorable period, when the monarch found a servile acquiescence in the ministers of his folly; when the liberty of the press was trodden under foot; when venal sheriffs returned packed juries to carry into effect those fatal conspiracies of the few against the many; when the devoted benches of public justice were filled by some of those foundlings of fortune, who, overwhelmed in the torrent of corruption at an early period, lay at the bottom like drowned bodies, while soundness or sanity remained in them; but at length, becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion, and abomination.

In that awful moment of a nation's travail; of the last gasp of tyranny, and the first breath of freedom, how pregnant is the example? The press extinguished, the people enslaved, and the prince undone. As the advocate of society, therefore

fore of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the press, that great centinel of the state, that grand detector of public imposture: guard it, because, when it sinks, there sinks with it, in one common grave, the liberty of the subject, and the security of the crown.

Gentlemen, I am glad that this question has not been brought forward earlier; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain analagous circumstances have taken place. At the commencement of that unfortunate war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm, to accuse was to convict. The danger loomed larger to the public eye, from the misty region through which it was surveyed. We measure inaccessible heights by the shadows which they project, where the lowness and the distance of the light form the length of the shade.

There is a sort of aspiring and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, gentlemen, can you ascribe that in the wise, the reflecting, and the philosophic

phic nation of Great Britain, a printer has been gravely found guilty of a libel, for publishing those resolutions to which the present minister of that kingdom had actually subscribed his name? To what other cause can you ascribe, what in my mind is still more astonishing, in such a country as Scotland—a nation cast in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth; cool and ardent; adventurous and persevering; winging her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every art, and decked with the wreath of every muse, from the deep and scrutinizing researches of her Hume, to the sweet and simple, but not less sublime and pathetic morality of her Burns—how, from the bosom of a country like that, genius, and character, and talents, should be banished to a distant barbarous soil;* condemned to pine under the horrid communion of vulgar vice and baseborn profligacy, for twice the period that ordinary calculation gives to the continuance of human life?

But I will not further press any idea that is painful to me, and I am sure must be painful to you: I will only say, you have now an example, of which neither England nor Scotland had the

* Mr. Curran alludes to the sentence of transportation passed in Scotland upon Mr. Muir, &c. &c.

advantage;

advantage; you have the example of the panic, the infatuation, and the contrition of both. It is now for you to decide, whether you will profit by their experience of idle panic and idle regret, or whether you meanly prefer to palliate a servile imitation of their frailty, by a paltry affectation of their repentance. It is now for you to shew, that you are not carried away by the same hectic delusions to acts, of which no tears can wash away the fatal consequences, or the indelible reproach.

Gentlemen, I have been warning you by instances of public intellect suspended or obscured; let me rather excite you by the example of that intellect recovered and restored. In that case which Mr. Attorney-general has cited himself, I mean that of the trial of Lambert in England, is there a topic of invective against constituted authorities; is there a topic of abuse against every department of British government, that you do not find in the most glowing and unqualified terms in that publication, for which the printer of it was prosecuted, and acquitted by an English jury? See too what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage, and that of a man who makes publication his trade. And saying this, let me not be misunderstood.

stood. It is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you that these grievances, which this paper supposes, do in fact exist: yet I cannot but say, that the movers of this prosecution have forced this question upon you. Their motives and their merits, like those of all accusers, are put in issue before you; and I need not tell you how strongly the motive and merits of any informer ought to influence the fate of his accusation.

I agree most implicitly with Mr. Attorney-general, that nothing can be more criminal than an attempt to work a change in the government by armed force; and I entreat that the court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to overawe or to overturn the government. But I put my client's case upon another ground:—if he was led into an opinion of grievances, where there were none; if he thought there ought to be a reform, where none was necessary, he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God, before whom the accuser, the accused, and the judge must appear together; that is, not for the clearness of his understanding, but for the purity of his heart.

Gentlemen,

Gentlemen, Mr. Attorney-general has said, that Mr. Rowan did by this publication (supposing it be his) recommend, under the name of equality, a general indiscriminate assumption of public rule by every the meanest person in the state. Low as we are in point of public information, there is not, I believe any man, who thinks for a moment, that does not know, that all which the great body of the people, of any country, can have from any government, is a fair encouragement to their industry, and protection for the fruits of their labour. And there is scarcely any man, I believe, who does not know, that, if a people could become so silly as to abandon their stations in society, under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment, or any such desperate assumption? I will read the words which relate to that subject: "By liberty we never understood unlimited freedom, nor by equality the levelling of property or the destruction of subordination." I ask you, with what justice, upon what principle of common sense, you can charge a man with the publication of sentiments, the very reverse of what his words avow? and that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained? or if you do adopt an arbitrary principle of imputing to him *your* meaning instead of his own, what publication can

be guiltless or safe? It is a sort of accusation that I am ashamed and sorry to see introduced in a court acting on the principles of the British constitution.

In the bitterness of reproach it was said, "Out of thine own mouth will I condemn thee;" from the severity of justice I demand no more. See if in the words that have been spoken, you can find matter to acquit, or to condemn: "By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination.—" "This is a calumny invented by that faction or that gang, which misrepresents the king to the people, and the people to the king, trades one half of the nation to cajole the other, and, by keeping up distrust and division, wishes to continue the proud arbitrator of the fortune and fate of Ireland." Here you find that meaning disclaimed as a calumny, which is artfully imputed as a crime.

I say therefore, gentlemen of the jury, as to the four parts into which the publication must be divided, I answer thus. It calls upon the volunteers. Consider the time, the danger, the authority of the prosecutors themselves for believing that danger to exist, the high character, the known moderation, the approved loyalty of that venerable institution the similarity of the circumstances between the period at which they
were

were summoned to take arms, and that in which they have been called upon to re-assume them. Upon this simple ground, gentlemen, you will decide, whether this part of the publication was libellous and criminal, or not.

As to reform, I could wish to have said nothing upon it: I believe I have said enough: if Mr. Rowan in disclosing that opinion thought the state required it, he acted like an honest man. For the rectitude of the opinion he was not answerable; he discharged his duty in telling the country that he thought so.

As to the emancipation of the catholics, I cannot but say that Mr. Attorney-general did very wisely in keeping clear of that subject. Yet, gentlemen, I need not tell you how important a figure it was intended to make upon the scene; though, from unlucky accidents, it has become necessary to expunge it during the rehearsal.*

Of the concluding part of this publication; the convention which it recommends, I have spoken already. I wish not to trouble you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could perhaps scarcely be expected.

* Between the period of the publication and prosecution, the legislature had, by the recommendation of the crown, removed the principal grievances of the catholic code.

It is however with pleasure I feel I am drawing to a close, and that only one question remains, to which I would beg your attention.

Whatever, gentlemen, may be your opinion of the meaning of this publication, there yet remains a great point for you to decide upon: namely, whether, in point of fact, this publication be imputable to Mr. Rowan or not? whether he did publish it or not? Two witnesses are called to that fact: one of the name of Lyster, and the other of the name of Morton. You must have observed that Morton gave no evidence upon which that paper could have even been read; he produced no paper, he identified no paper, he said that he got some paper, but that he had given it away. So that, in point of law, there was no evidence given by him, on which it could have gone to a jury, and therefore, it turns entirely upon the evidence of the other witness. He has stated that he went to a public meeting, in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you. I know you are well acquainted with the fact, that the credit of every witness must be considered by, and rest with the jury. They are the sovereign judges of that, and I will not insult your feelings, by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty, or property, or character of your fellow-citizens. Under what circumstances does this evidence
come

before you? The witness says he has got a commission in the army by the interest of a lady from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers, to make an indorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence on the subject; he "took it with no such view." There is something whimsical enough in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is I know not, I know not the man; but his credit is impeached. Mr. Blake was called, he said he knew him. I asked him, "Do you think, Sir, that Mr. Lyster is or is not a man deserving credit upon his oath?" If you find a verdict of conviction, it can be only upon the credit of Mr. Lyster. What said Mr. Blake? Did he tell you that he considered him a man to be believed upon his oath? He did not attempt to say that he did. The best he could say was, that he "would hesitate," Do you believe Blake? Have you the same opinion of Lyster's testimony that Mr. Blake has? Do you know Lyster? If you do know him, and know that he is credible, your knowledge should not be shaken by the doubts of any man. But if you do not know him, you must take his credit from an unimpeached witness, swearing that he would hesitate to believe him. In my mind there is a circumstance of the strongest nature that came out from Lyster on the table.

I am aware that a most respectable man, if impeached by surprise, may not be prepared to repel a wanton calumny by contrary testimony: but was Lyster unapprized of this attack upon him? What said he? "I knew that you had Blake to examine against me, you have brought him here for that purpose." He knew the very witness that was to be produced against him, he knew that his credit was impeached, and yet he produced no person to support that credit. What said Mr. Smyth? "From my knowledge of him I would not believe him upon his oath."

But what said Mrs. Hatchell? Was the production of that witness a surprise upon Mr. Lyster? Her cross-examination shews the fact to be the contrary. The learned counsel, you see, was perfectly apprized of a chain of private circumstances to which he pointed his questions: this lady's daughter was married to the elder brother of the witness Lyster. Did he know these circumstances by inspiration? no; they could come only from Lyster himself. I insist, therefore, that the gentleman knew his character was to be impeached, his counsel knew it, and not a single witness has been produced to support it. Then consider, gentlemen, upon what ground can you find a verdict of conviction against my client, when the only witness produced to the fact of publication is impeached, without even an attempt to defend his character. Many
hundreds

hundreds, he said were at that meeting: Why not produce one of them to swear to the fact of such a meeting? One he has ventured to name, but he was certainly very safe in naming a person, who he has told you is not in the kingdom, and could not therefore be called to confront him.

Gentlemen, let me suggest another observation or two, if still you have any doubt as to the guilt or innocence of the defendant. Give me leave to suggest to you, what circumstances you ought to consider in order to found your verdict. You should consider the character of the person accused; and in this your task is easy. I will venture to say, there is not a man in this nation more known than the gentleman who is the subject of this prosecution, not only by the part he has taken in public concerns, and which he has taken in common with many, but still more so, by that extraordinary sympathy for human affliction, which, I am sorry to think, he shares with so small a number. There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings—that you do not see his honest and manly figure, with uncovered head, soliciting for their relief; searching the frozen heart of charity for every string that can be touched by compassion, and urging the force of every argument and every motive, save that which his modesty suppresses—the authority of his own

generous example. Or if you see him not there, you may trace his steps to the private abode of disease, and famine, and despair; the messenger of heaven, bringing with him food, and medicine, and consolation. Are these the materials of which you suppose anarchy and public rapine to be formed? Is this the man, on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed? Is this the man likely to apostatise from every principle that can bind him to the state; his birth, his property, his education, his character, and his children? Let me tell you, gentlemen of the jury, if you agree with his prosecutors, in thinking that there ought to be a sacrifice of such a man, on such an occasion, and upon the credit of such evidence, you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment with less danger to his person or to his fame: for where could the hireling be found to fling contumely or ingratitude at his head, whose private distresses he had not endeavoured to alleviate, or whose public condition he had not laboured to improve?

I cannot, however, avoid averting to a circumstance that distinguishes the case of Mr. Rowan from that of the late sacrifice in a neighbouring kingdom.*

* Scotland, from whence Messrs. Muir, Palmer, and others, were transported for sedition.

The severer law of that country, it seems, and happy for them that it should, enables them to remove from their sight the victim of their infatuation. The more merciful spirit of our law deprives you of that consolation; his sufferings must remain for ever before our eyes, a continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will challenge the great and paramount inquest of society: the man will be weighed against the charge, the witness, and the sentence; and impartial justice will demand, why has an Irish jury done this deed? The moment he ceases to be regarded as a criminal, he becomes of necessity an accuser: and let me ask you, what can your most zealous defenders be prepared to answer to such a charge? When your sentence shall have sent him forth to that stage, which guilt alone can render infamous, let me tell you, he will not be like a little statue upon a mighty pedestal, diminishing by elevation; but he will stand a striking and imposing object upon a monument, which, if it does not (and it cannot) record the atrocity of his crime, must record the atrocity of his conviction. Upon this subject, therefore, credit me when I say, that I am still more anxious for you, than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the jury of his own choice, which the law of England allows, but which ours refuses; collected in that box by a
 person

person, certainly no friend to Mr. Rowan, certainly not very deeply interested in giving him a very impartial jury. Feeling this, as I am persuaded you do, you cannot be surprized, however you may be distressed, at the mournful pre-sage, with which an anxious public is led to fear the worst from your possible determination. But I will not for the justice and honour of our common country, suffer my mind to be borne away by such melancholy anticipation. I will not relinquish the confidence that this day will be the period of his sufferings; and, however mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family, and the wishes of his country. But if, which heaven forbid, it hath still been unfortunately determined, that because he has not bent to power and authority, because he would not bow down before the golden calf and worship it, he is to be bound and cast into the furnace; I do trust in God, that there is a redeeming spirit in the constitution, which will be seen to walk with the sufferer through the flames, and to preserve him unhurt by the conflagration.

[Upon the conclusion of this speech Mr. Curran was again for many minutes loudly applauded by the auditors; and upon leaving the court was drawn home by the populace, who took the horses from his carriage.]

COURT OF KING'S BENCH,

Tuesday, February 4th, 1794.

THE Recorder applied to set aside the verdict given in the case of Archibald Hamilton Rowan, Esq. His application was grounded upon different affidavits sworn in court, charging, 1st. one of the JURORS *with a declaration against Mr. Rowan, previous to trial.*—2dly. *Partiality in one of the HIGH SHERIFFS.*—3dly. That John Lyster, the PRINCIPAL EVIDENCE, *was not to be believed upon his oath, he, as the affidavits stated, having been guilty of perjury.*—And 4thly. the learned gentleman rested his case, upon *the misdirection of the court.* He was followed on the same side by Mr. Curran, who said :

It was an early idea, that a verdict in a criminal case could not be set aside *inconsulto rege*, but the law had stood otherwise without a doubt to impeach its principle for the last two reigns.

Common sense would say, that the discretion of the court should go at least as far in criminal as in civil cases, and very often to go no further would be to stop far short of what was right, as in those great questions where the prosecution may be considered either as an attempt to extinguish liberty or as a necessary measure for the purpose of repressing

pressing the virulence of public licentiousness and dangerous faction; where there can be no alternative between guilt or martyrdom, where the party prosecuted must either be considered as a culprit sinking beneath the punishment of his own crimes, or a victim sacrificed to the vices of others. But when it clearly appears that the party has fallen a prey to persecuting combination there remains but one melancholy question, *how far did that combination reach?*

There have been two cases lately decided in this very court; the King and Pentland, where the motion was made and refused; and the King and Bowen, where it was granted; both of which shew, that captious sophistry, and technical pendency, had here, as well as in England, given way to liberal and rational enquiry; and that the court would not now, in their discretion, refuse a motion of this kind, unless they could at the same time, lay their hands upon their hearts, and say, they believed in their consciences that justice had been done: such was the manly language of one of their lordships (Mr. Justice Downes); and such the opinion of the court on a former occasion.

He then cited 7 modern 57. as referred to in Bacon, tit. Trial, to shew that where there was good ground of challenge to a juror, not known at the trial, it was sufficient cause for setting aside the verdict.

In

In England they have a particular act of parliament, entitling the party to strike a special jury to try the fact, and then he has time between the striking and the trial to question the propriety of that jury: here my client had no previous information till the instant of trial who his jurors were to be.

There are certain indulgences granted at times perhaps by the connivance of humanity, which men, who are not entitled to demand them in an open court, obtain nevertheless by sidelong means; and perhaps the little breach which affords that light to the mind of the man accused, is a circumstance concerning which the court would feel pain, even if called upon, to say, that it should in all cases be prevented: but to overturn principles and authorities, for the purpose of oppressing the subject, is what this court will never do.

The first of the affidavits I shall consider, is that of the traverser. I do not recollect whether it states the sheriff, in avowed terms, to be an emissary or a hireling agent of the castle, therefore I do not state it from the affidavit; but he swears, that he does believe that he did labour to bring into the box a jury full of prejudices, and of the blackest impressions; instead of having, as they ought, fair and impartial minds, and souls like white paper.

This sheriff now stands in court, he might have denied it if he would, he had an opportunity of answering it; but he has left it an undenied assertion—he was not certainly obliged to answer it, for no man is bound to convict himself. But there is a part of that charge which amounts, at least, to this, “Your heart
 “was poisoned against me, and you collected
 “those to be my judges, who, if they could not
 “be under the dominion of bad dispositions,
 “might be at least the dupes of good.” The most favourable thing that can be said is this, you sought to bring against me honest prejudices, but you brought against me wicked ones. The very general charge, that he sought for persons who he knew were most likely to bring prejudices with them into the jury box, is a part of the affidavit that it was incumbent on him to answer if he could.

I do not contend, that what is charged in the affidavit would have been a ground of principal challenge to the array; but I hold it to be the better opinion, that a challenge to the array for favour does well lie in the mouth of the defendant.

The antient notion was, you shall not challenge the array for favour where the king is a party; the king only can challenge for favour, for the principle was, that every man ought to be favourable to the crown; but, thank
 God,

God, the advancement of legal knowledge, and the growing understanding of the age, have dissipated such illiberal and mischievous conceptions.

But I am putting too much stress upon such technical, discarded, and antiquated scruples. The true question has been already stated from the authority of Mr. Justice Downes, and that question is, Has justice been done?

It is a matter upon which scarce any understanding would condescend to hesitate, whether a man had been fairly tried, whose triors had been collected together by an avowed enemy, whose conduct had been such, as to leave no doubt that he had purposely brought prejudiced men into the box.

In every country, where freedom obtains, there must subsist parties. In this country and Great Britain I trust there never will be a time when there shall not be men found zealous for the actual government of the day. So, on the other hand, I trust, there will never be a time, when there will not be found men zealous and enthusiastic in the cause of popular freedom and of the public rights. If, therefore, a person in public office suffers his own prejudices, however honestly anxious he may be for a prosecution carried on by those to whom he is attached, to influence him so far as to choose
men,

men, to his knowledge, devoted to the principles he espouses, it is an error which a high court of judicature, seeking to do right justice, will not fail to correct.

A sheriff, in such a case, might not have perceived the partiality of his conduct, because he was surveying through the medium of prejudice and habitual corruption: but it is impossible to think that this sheriff meant to be impartial, it is an interpretation more favourable than his conduct will allow of; if he deserves any credit at all, it is not answering the charge made against him: at the same time, that, by not answering it, he has left unimpeached the credit of the charge itself.

[Here the sheriff tendered some form of an affidavit, which the court refused to have sworn or read, for the same reason that those sworn and tendered by the defendant's counsel, had been before refused. Mr. Curran, however, consented to its being sworn and read; but the attorney-general declined it, being unacquainted with the contents, and uninstructed as to its tendency; it therefore was not sworn.]

Mr. Curran.—Is this then the way to meet a fair application to the court, to see whether justice has been done between the subject and the crown. I offer it again, let the affidavit be read. And let me remind the court, that the great reason for sending a cause back to a jury is, that
new

new light must be shed upon it; and how must your lordships feel, when you see that indulgence granted to the conscience of the jury, denied to the court?

Mr. Attorney-general.—I am concerned that any lawyer should make a proposition in the manner Mr. Curran has done; he proposes to have an affidavit read, provided we consent that others, which the court have already refused, should be now read.* I did not hear it offered; but is it to be presumed I will consent to have an affidavit read, about which I know nothing. Yesterday, without any communication with a human being, I did say, that I conceived it unnecessary to answer any of the affidavits, thinking that they were not sufficient to ground the application made to the court. And it is presumed I am so mad as to consent to the reading of affidavits which I have not seen.

[Here some altercation took place, and lord Clonmel, chief justice, interposed, saying, that the counsel had certainly a right to argue it upon the ground, that the sheriff was biassed, and did return a jury prejudiced against the traverser.]

Mr. Curran was then proceeding to observe

* It may not be improper to observe that Mr. Attorney-general mistook Mr. Curran's proposal, which was an *unqualified* offer to have Mr. Giffard's affidavit read.

upon the expression of one of the jury, sworn to in another affidavit, "that there would be
 "no safety in the country, until the defendant
 "was either hanged or banished;" when it was asked by the court, whether the time of its coming to the knowledge of the traverser, that the sheriff was biassed, was stated in his affidavit?

Mr. Curran answered, he was in prison, and could not have the attendance of those counsel, whose assistance he had in court; and besides, from the nature of the circumstances, it was impossible he could have been sufficiently apprized of its consequences, for he saw not that pannel till the day of the trial, when he could not have had time to make any enquiry into the characters, dispositions, or connections of the jury. Mr. Curran then reverted to his argument on the expression of the juror.

If triors had been appointed to determine the issue, favourable or not, what would have been their finding? Could they say upon their oaths, that he was not unfavourable to that party against whom he could make such a declaration?

Favour is not cause of principal challenge, which if put upon a pleading, would conclude the party. Favour is that which makes the man, in vulgar parlance, unfit to try the question.

tion. And as to the time these facts came to his knowledge, he has sworn that he was utterly ignorant of them at the time of his coming into court to take his trial.

I will not glance at the character of any absent noble person, high in office; but let it be remembered, that it is a government prosecution, and that the witness has, from a low and handicap situation, scraped himself into preferment, perhaps, for I will put the best construction upon it, by offering himself as a man honestly anxious for the welfare of his country; in short, it is too obvious to require any comment, what the nature of the whole transaction has been, that he had got his commission as a compensation, *pro labore impendendo*, and came afterwards into court to pay down the stipulated purchase.

Had this then been an unbiassed jury, was there not something in all these circumstances, that might have afforded more deliberation than that of one minute per man, for only so long was the jury out; and had this been a fair witness, would he have lain down under a charge, which if true, ought not only to damn this verdict, but his character for ever? What would a corps of brother officers think of a person charged, upon oath, with the commission of two wilful perjuries, and that charge remaining undenied? Here is an undenied charge in point of fact; and although I do not call upon the
court

court to say, that this is a guilty and abominable person, yet surely the suspicion is strongly so, and must be considered. This was at least a verdict, where the evidence went to the jury under slighter blemishes than it will if my client has the advantage of another trial, for then he will put out of the power of man to doubt that this witness has been perjured. This witness, who has had notice, both here and at the trial, of the aspersions on his character, and yet has not called a human being to say that he entertained a contrary opinion of him.

Was he known any where? Did he crawl unobserved to the castle? Was it without the aid or knowledge of any body, that that gaudy plumage grew on him, in which he appeared in court? If he was known for any thing else than what he is stated to be, it was, upon that day, almost a physical impossibility, in a court-house which almost contained the country, not to have found some person, to give some sort of testimony respecting his general character. For though no man is bound to be ready at all times to answer particular charges, yet every man is supposed to come with his public attestation of common and general probity. But he has left that character, upon the merits of which my client is convicted, unsupported, even by his own poor corporal swearing. You are called upon, then, to say, whether upon the evidence of a being of this kind, such a man as that is to be convicted, and sentenced to punishment,

punishment, in a country where humanity is the leading feature even of the criminal law.

He then observed upon the second witness.—
A man coming to support the credit of another collaterally is himself particularly pledged ; then what was his testimony ! He did not know whether Mr. Giffard was concerned in the newspaper!!! And now, you have the silence of Giffard himself in not answering Mr. Rowan's affidavit to contradict that. And next, he did not know whether his own cousin-german was the relation of their common uncle!!! I call upon you, my lords, in the name of sacred justice, and your country, to declare whether the melancholy scenes and murderous plots of the Meal-tub and the Rye-house are to be acted over again ? And whether every Titus Oates that can be found is to be called into your courts, as the common vouchee of base and perjured accusation ?

He then proceeded to another ground, namely, that the direction of the court was not, as he conceived, agreeable to the law of Ireland. The defence of my client (he added) was rested upon this, that there was no evidence of the fact of publication ; upon the incredibility of the fact, and the circumstances of discredit in the character of the witness ; yet the court made this observation : “ gentlemen, it scarcely lies in the mouth of Mr. Rowan to build a defence

“ upon objections of this kind to the characters
 “ of witnesses, because the fact was public ;
 “ there were many there ; the room was
 “ crowded below ; the gallery was crowded
 “ above ; and the publicity of the fact enabled
 “ him to produce a number of witnesses to
 “ falsify the assertion of the prosecutor, if in
 “ fact it could be falsified !” Is that the prin-
 ciple of criminal law ? Is it a part of the British
 law that the fate of the accused shall abide, not
 the positive establishment of guilt by the pro-
 secutor, but the negative proof of innocence by
 himself ? Why has it been said in foolish old
 books, that the law supposes the innocence of
 every man ’till the contrary is proved ? How has
 it happened that that language has been admired
 for its humanity, and not laughed at for its
 absurdity, in which the prayers of the court are
 addressed to heaven for the safe deliverance of
 the man accused ? How comes it that so much
 public time is wasted in going into evidence of
 guilt, if the bare accusation of a man did call
 upon him to go into evidence of his innocence ?
 The force of the observation is this—Mr. Rowan
 impeaches the credit of a witness, who has sworn
 that he saw him present, and doing certain acts
 at a certain meeting ; but it is asked, has he sub-
 stantiated that discredit, by calling all the per-
 sons, who were present, to prove his absence from
 that meeting, which is only stated to have
 existed by a witness whom he alleges to have
 perjured himself ? I call upon the example of
 judicial

judicial character ; upon the faith of that high office which is never so dignified as when it sees its errors and corrects them, to say, that the court was for a moment led away, so as to argue from the most seductive of all sophisms, that of the *positio principii*.

See what meaning is to be gathered from such words : we say the whole that this man has sworn is a consummate lie ; shew it to be so, says the court, by admitting a part of it to be true. It is a false swearing ; it is a conspiracy of two witnesses against this defendant ; well then, it lies upon him to rebut their testimony, by proving a great deal of it to be true ! Is conjecture then, in criminal cases, to stand in the place of truth and demonstration ? Why were not some of those—(I will strip the case of the honour of names which I respect)—but why were not some of those, who knew that these two persons were to be brought forward, and that there were to be objections to their credit—if, as it is stated, it happened in the presence of a public crowd, rushing in from motives of curiosity, why were not numbers called on to establish that fact ? On the contrary, the court have said to this effect : Mr. Rowan, you say you were not there ; produce any of those persons with whom you were there, to swear you were not there ! You say it was a perjury ; if so, produce the people that he has perjured himself in swearing to have been there ! But as to your own being

P 2

there,

there, you can easily shew the contrary of that, by producing some man that you saw there! You say you were not there? Yes. There were one hundred and fifty persons there: now produce any one of those to swear they saw you there!

It is impossible for the human mind to suppose a case, in which infatuation must have prevailed in a more progressive degree, than when a jury are thus, in fact, directed to receive no refutation nor proof of the perjury of the witness, but only of his truth. We will permit you to deny the charge by establishing the fact: we will permit you to prove that they swore falsely to your being there, by producing another witness to prove to a certainty that you were there.—[Interrupted by lord Clonmell.]

Lord Clonmell, *chief justice*.—The reasoning of the court was strong upon that point: this is a transaction stated by the witness to have happened in open day, in a crowded assembly in the capital, amidst a number of persons dressed in the uniform of Hamilton Rowan. There has been nothing suddenly brought forward to surprise the traverser; yet what has he done, did he offer as in the common course to prove an alibi? It is stated to be at such a day; the witness swears at such an hour—the place is sworn to have been full of people, of Mr. Rowan's friends: but if there was even a partial assembly, it would be
easy

easy still to produce some one of those persons who were present to say, that the fact did not happen which has been sworn to, or if you say Mr. Rowan was not there, it is easier still to prove it by shewing where he was; as thus: I breakfasted with him, I dined with him, I supped with him, he was with me, he was not at Pardon's; disprove that assertion by proving an affirmation inconsistent with it.

Mr. Curran.—I beg leave to remind the court of what fell from it. “He may call” (said the court) “any of those persons; he has not produced one of them;” upon this, I think, a most material point does hang. “He might have called them, for they were all of his own party.”

Lord Clonmell.—That is, if there were such persons there; or if there was no meeting at all, he might have proved that.

Mr. Curran.—There was no such idea put to the jury, as whether there was a meeting or not: it was said they were all of his party, he might have produced them, and the non-production of them was a “volume of evidence” upon that point. No refinement can avoid this conclusion, that even as your lordship now states the charge, the fate of the man must depend upon proving the negative.

Until the credit of the witness was established
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he could not be called upon to bring any contrary evidence. What does the duty of every counsel dictate to him, if the case is not made out by his adversary or prosecutor? Let it rest; the court is bound to tell the jury so, and the jury are bound to find him not guilty. It is a most unshaken maxim, that *nemo tenetur prodere se ipsum*. And it would indeed be a very inquisitorial exercise of power, to call upon a man to run the risque of confirming the charge, under the penalty of being convicted by *nil dicit*. Surely at the criminal side of this court, as yet, there has been no such judgment pronounced. It is only when the party stands mute of malice, that such extremes can be resorted to. I never before heard an intimation from any judge to a jury, that bad evidence liable to any and every exception ought to receive a sanction from the silence of the party. The substance of the charge was neither more nor less than this: that the falsehood of the evidence shall receive support and credit from the silence of the man accused. With anxiety for the honour and religion of the law, I demand it of you, must not the jury have understood that this silence was evidence to go to them; is the meaning contained in the expression “a volume of evidence” only insinuation! I do not know where any man could be safe. I do not know what any man could do to screen himself from prosecution; I know not how he could be sure, even when he was at his prayers before the throne of Heaven, that he was not passing that moment of his life, on which he was to be charged

charged with the commission of some crime, to be expiated to society by the forfeiture of his liberty or of his life. I do not know what shall become of the subject, if a jury are to be told that the silence of the man charged is a "volume of evidence" that he is guilty of the crime: where is it written? I know there is a place where vulgar frenzy cries out, that the public instrument must be drenched in blood; where defence is gagged, and the devoted wretch must perish. But even there the victim of such tyranny is not made to fill, by voluntary silence, the defects of his accusation, for his tongue is tied, and therefore no advantage is taken of him by construction; it cannot be there said that his not speaking is a volume of evidence to prove his guilt.

But to avoid all misunderstanding, see what is the force of my objection: is it that the charge of the court cannot receive a practicable interpretation, that may not terrify men's minds with ideas such as I have presented? No—I am saying no such thing: I have lived too long and observed too much not to know, that every word in a phrase is one of the feet upon which it runs, and how the shortening or lengthening of one of those feet will alter the progress or direction of its motion. I am not arguing that the charge of the court cannot by any possibility be reconciled to the principles of law; I am agitating a bigger question; I am putting it to the conscience of
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the court, whether a jury may not have probably collected the same meaning from it, which I have affixed to it, and whether there ought not to have been a volume of explanation, to do away the fatal consequences of such mistake.

On what sort of a case am I now speaking? on one of that kind, which it is known has been beating the public heart for many months: which from a single being in society has scarcely received a cool or tranquil examination. I am making that sort of application, which the expansion of liberal reason and the decay of technical bigotry have made a favoured application.

In earlier times it might have been thought sacrilege to have meddled with a verdict once pronounced; since then, the true principles of justice have been better understood; so that now, the whole wisdom of the whole court will have an opportunity of looking over that verdict, and setting right the mistake which has occasioned it.

Mr. Curran made other observations, either to corroborate his own, or to answer the opposite counsel; of which it is impossible to give an exact detail; and concluded: You are standing on the scanty isthmus that divides the great ocean of duration; on one side of the past, on the other of the future: a ground, that while you yet hear me, is washed from beneath our feet. Let me remind

remind you, my lords, while your determination is yet in your power, *dum versatur adhuc intra penetralia Vestæ*, that on that ocean of future you must set your judgment afloat. And future ages will assume the same authority, which you have assumed; posterity feel the same emotions which you have felt, when your little hearts have beaten, and your infant eyes have overflowed, at reading the sad history of the sufferings of a Russel or a Sidney.

[The conclusion of Mr. Curran's speech was marked by another burst of applause, similar to those which accompanied his former exertions in this cause.]

The application to set aside the verdict was refused by the court; and Mr. Rowan was sentenced to pay a fine of £500, to be imprisoned two years, and to find security for good behaviour, himself in £2000 and two sureties in £1000 each.

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

IN DEFENCE OF

MR. PATRICK FINNEY,

ON TUESDAY, JANUARY 16, 1798.

ABSTRACT OF THE INDICTMENT.

FIRST count. "That Patrick Finney, yeoman,
"on the thirtieth day of April, in the thirty-
"seventh year of the king, and divers other
"days, at the city of Dublin, being a false
"traitor, did compass and imagine the death
"of our said lord the king, and did traitorously
"and feloniously intend our said lord the king
"to kill, murder, and put to death."

The overt acts laid were as follow: "1. Ad-
"hering to the persons exercising the powers of
"government in France, in case they should
"invade, or cause to be invaded, this kingdom
of

“ of Ireland, they being enemies to the king,
 “ and at war.—2. That the conspirators afore-
 “ said did meet, &c. confer, consult, and deli-
 “ berate, about adhering to the persons exer-
 “ cising the powers of government in France.—
 “ 3. Adhering to the persons exercising the
 “ powers of government in France.—4. Con-
 “ spiring that one or more persons should be
 “ sent into France to excite an invasion of Ire-
 “ land.—5. Conspiring that one or more persons
 “ should be sent into France to excite an inva-
 “ sion of this kingdom and to make war therein;
 “ and for that purpose did ask, levy, and re-
 “ ceive, &c. from other traitors, money, to wit,
 “ from each £20, to defray the expenses of the
 “ persons to be sent.—6. That conspiring, &c.
 “ they did send into France four persons un-
 “ known, to excite the persons exercising the
 “ powers of government in France to invade
 “ this kingdom, and make war therein.—7. Con-
 “ spiring to send, and sending four persons into
 “ France to persuade invasion, and to aid them
 “ in invading, and raising, and making war;
 “ and Finney, then and there, demanding and
 “ receiving money, viz. £20, to defray the charges
 “ of said persons.—8. That said Patrick Finney
 “ became an United Irishman for the purpose
 “ of assisting the persons exercising the powers
 “ of government in France, and being met to
 “ the number of forty-eight other traitors, did
 “ divide into four splits, which each contained
 “ twelve traitors, and each split did then choose
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“ one to be secretary, to consult on behalf thereof
 “ with other splits, under the denomination of
 “ baronial meetings, for the purpose of adhering
 “ and making war, in case of an invasion of
 “ Ireland from France, and then and there con-
 “ spiring an attack upon the castle of Dublin,
 “ &c. and to deprive his majesty of the stores
 “ and ammunition therein; and said Finney, to
 “ facilitate such attack, did advise and com-
 “ mend other traitors to view White’s-court, &c.
 “ and give their opinion to their several splits,
 “ so that their secretaries might report the same
 “ to their baronial meetings.—9. Adhering to
 “ the persons exercising the powers of govern-
 “ ment in France, &c. and with forty-eight other
 “ conspirators, divided into four splits, each
 “ containing twelve, each split choosing a secre-
 “ tary to confer for the purpose of adhering to
 “ the enemy in case of invasion, and confeder-
 “ ating and agreeing that a violent attack
 “ should be made on the ordnance stores, &c.—
 “ 10. Consulting, &c. to procure an invasion.—
 “ 11. Consulting to raise insurrection, rebel-
 “ lion, and war, in case of invasion of Ireland
 “ or Great Britain from France.—12. Con-
 “ spiring to assist the persons exercising the
 “ powers of government in France, in case
 “ of their invading this realm, with ships and
 “ arms.”

There was a second count, for “ adhering to
 “ the king’s enemies within the realm,” and in
 support

support of this count, the overt acts laid were exactly the same as those above recited.

A jury being sworn, the attorney-general stated the case on the part of the crown, the evidence being gone through on both sides, Mr. Curran spoke as follows:

MY LORDS, AND GENTLEMEN OF THE JURY. In the early part of this trial, I thought I should have had to address you on the most important occasion possible, on this side of the grave, a man labouring for life, on the casual strength of an exhausted, and at best, a feeble advocate. But, gentlemen, do not imagine that I rise under any such impressions—do not imagine that I approach you, sinking under the hopeless difficulties of my cause.—I am not now soliciting your indulgence to the inadequacy of my powers, or artfully enlisting your passions at the side of my client.—No! gentlemen, but I rise with what of law, of conscience, of justice, and of constitution, there exists within this realm at my back, and, standing in front of that great and powerful alliance, I DEMAND a verdict of acquittal for my client!—What is the opposition of evidence! It is a tissue which requires no strength to break through, it vanishes at the touch, and is sundered into tatters.

The right honourable gentleman who stated
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the case in the first stage of this trial, has been so kind as to express a reliance, that the counsel for the prisoner would address the jury with the same candour which he exemplified on the part of the crown; readily and confidently do I accept the compliment, the more particularly, as in my cause I feel no temptation to reject it. Life can present no situation wherein the humble powers of man are so awfully and so divinely excited, as in defence of a fellow-creature placed in the circumstances of my client: and if any labours can peculiarly attract the gracious and approving eye of heaven, it is when God looks down on a human being assailed by human turpitude, and struggling with practices against which the Deity has placed his special canon when he said—"Thou shalt not bear *false witness* against thy neighbour—thou shalt do no *murder*!"

Gentlemen, let me desire you again and again to consider all the circumstances of this man's case, abstracted from the influence of prejudice and habit, and if aught of passion assumes dominion over you, let it be of that honest, generous nature, that good men must feel when they see an innocent man depending on their verdict for his life: to this passion I feel myself insensibly yielding; but unclouded, though not unwarmed, I shall, I trust, proceed in my great duty.—Wishing to state my client's case with all possible succinctness which the nature of the charge admits

mits, I am glad my learned colleague has acquitted himself on this head already to such an extent, and with such ability, that any thing I can say will chance to be superfluous—in truth, that honesty of heart, and integrity of principle, for which all must give him credit, uniting with a sound judgment and sympathetic heart, have given to his statement all the advantages it could have derived from these qualities. He has truly said, that “the declaratory act, the twenty-fifth of Edward III. is that on which all charges of high treason are founded,” and I trust the observation will be deeply engraven on your hearts. It is an act made to save the subject from the vague and wandering uncertainty of the law. It is an act which leaves it no longer doubtful whether a man shall incur conviction by his own conduct, or the sagacity of crown construction: whether he shall sink beneath his own guilt, or the cruel and barbarous refinement of crown prosecution; It has been most aptly called the blessed act; and oh! may the great God of justice and of mercy give repose and eternal blessing to the souls of those honest men by whom it was enacted! By this law no man shall be convicted of high treason, but on proveable evidence; the overt acts of treasons, as explained in this law, shall be stated clearly and distinctly in the charge; and the proof of these acts shall be equally clear and distinct, in order that no man’s life may depend on partial and wicked allegation.

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It does every thing for the prisoner, which he could do himself—it does every thing but uttering the verdict, which alone remains with you, and which, I trust, you will give in the same pure, honest, saving spirit, in which that act was formed.—Gentlemen, I would call it an omnipotent act, if it could possibly appal the informer from our courts of justice; but law cannot do it—religion cannot do it—the feelings of human nature, frozen in the depraved heart of the wretched informer—cannot be thawed!

Law cannot prevent the envenomed arrow from being pointed at the intended victim; but it has given him a shield in the integrity of a jury! Every thing is so clear in this act, that all must understand:—the several acts of treason must be recited, and proveable conviction must follow.—What is proveable conviction? Are you at a loss to know? Do you think if a man comes on the table, and says—“By virtue of my oath, I know
“ of a conspiracy against the state, and such and
“ such persons are engaged in it”—Do you think his mere allegation shall justify you in a verdict of conviction? A witness coming on this table of whatsoever description, whether the noble lord who has been examined, or the honourable judges on the bench, or Mr. James O’Brien, who shall declare upon oath that a man bought powder, ball, and arms, intending to kill another—this is not proveable conviction, the unlawful intention shall

shall be attached by cogency of evidence, and the credit of the witness must stand strong and unimpeached.

The law means not, that infamous assertion or dirty ribaldry is to overthrow the character of a man; even in these imputations flung against the victim, there is fortunately, something detergent, that cleanses the character it was destined to befoul.

In stating the law, gentlemen, I have told you that the overt acts must be laid and proved by positive testimony of untainted witnesses, and in so saying I have only spoken the language of the most illustrious writers on the law of England. I should, perhaps, apologize to you for detaining your attention so long on these particular points, but that in the present disturbed state of the public mind, and in the abandonment of principle which it but too frequently produces, I think I cannot too strongly impress you with the purity of legal distinction, so that your souls shall not be harrowed with those torturing regrets which the return of reason would bring along with it, were you, on the present occasion, for a moment to resign it to the subjection of your passions; for these, though sometimes amiable in their impetuosity, can never be dignified and just, but under the controul of reason. The charge against the prisoner is two-fold—compassing and imagining the king's death, and adhering

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hering to the king's enemies. To be accurate on this head is not less my intention than it is my interest; for if I fall into errors, they will not escape the learned counsel who is to come after me, and whose detections will not fail to be made in the correct spirit of crown prosecution. Gentlemen, there are no fewer than thirteen overt acts, as described, necessary to support the indictment; these, however, it is not necessary to recapitulate. The learned counsel for the crown has been perfectly candid and correct in saying, that if any of them support either species of treason charged in the indictment, it will be sufficient to attach the guilt. I do not complain that on the part of the crown it was not found expedient to point out which act or acts went to support the indictment; neither will I complain, gentlemen, if you fix your attention particularly on the circumstance. Mr. Attorney-general has been pleased to make an observation, which drew a remark from my colleague, with whom I fully agree, that the atrocity of a charge should make no impression on you; it was the judgment of candour and liberality, and should be yours—nor though you should more than answer the high opinion I entertain of you, and though your hearts betray not the consoling confidence which your looks inspire, yet do not disdain to increase your stock of candour and liberality, from whatsoever source it flows; and though the abundance of my client's innocence may render him independent of its exertions,

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your country wants it all. You are not to suffer impressions of loyalty, or an enthusiastic love for the sacred person of the king, to give your judgments the smallest bias. You are to decide from the evidence which you have heard, and if the atrocity of the charge were to have any influence with you, it should be that of rendering you more incredulous to the possibility of its truth. I confess, I cannot conceive a greater crime against civilized society, be the form of government what it may, whether monarchical, republican, or, I had almost said, despotic, than attempt to destroy the life of the person holding the executive authority—the counsel for the crown cannot feel a greater abhorrence against it than I do; and happy am I, at this moment, that I can do justice to my principles, and the feelings of my heart, without endangering the defence of my client, and that defence is, that your hearts would not feel more reluctant to the perpetration of the crimes with which he is charged, than the man who there stands at the bar of his country, waiting until you shall clear him from the foul and unmerited imputation—until your verdict, sounding life and honour to his senses, shall rescue him from the dreadful fascination of the informer's eye. The overt acts in the charge against the prisoner are many, and all apparently of the same nature, but they, notwithstanding, admit of a very material distinction; this want of candour I attribute to the base imposition of the prosecutor on those who brought him forward.

ward. You find at the bottom of the charge a foundation-stone attempted to be laid by O'Brien—the deliberations of a society of united Irishmen, and on this are laid all the overt acts. I said the distinction was of moment, because it is endeavoured to be held forth to the public—to all Europe, that, at a time like this of peril and of danger, there are, in one province alone, one hundred and eleven thousand of your countrymen combined for the purpose of destroying the king, and the tranquillity of the country which so much depends on him—an assertion which you should consider of again and again before you give it any other existence than it derives from the attainting breath of the informer, if nothing should induce that consideration but the name of IRISHMAN, the honours of which you share; a name so foully, and, as I shall demonstrate, so falsely aspersed.

If you can say that one fact of O'Brien's testimony deserves belief, all that can from thence be inferred is, that a great combination of mind and will exists on some public subject. What says the written evidence on that subject? What are the obligations imposed by the test-oath of the society of united Irishmen? Is it unjust to get rid of religious differences and distinction? Would to God it were possible! Is it an offence against the state, to promote a full, free, and adequate representation of all the people of Ireland in parliament? If it be, the text is full of
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its own comment, it needs no comment of mine. As to the last clause, obliging to secrecy.—Now, gentlemen of the jury, in the hearing of the court, I submit to the opposite counsel this question, I will make my adversary my arbiter—Taking the test-oath, as thus written, is there any thing of treason in it?—However objectionable it may be, it certainly is not treasonable: I admit there may be a colourable combination of words to conceal a real bad design, but to what evils would it not expose society, if, in this case, to *suppose* were to *decide*. An high legal authority thus speaks on this subject: “strong indeed must the evidence be, which goes to prove that any man can mean by words any thing more, than what is conveyed in their ordinary acceptation.” If the test of any particular community were an open one; if, like the London corresponding society, it was to be openly published, then, indeed, there might be a reason for not using words in their common application—but, subject to no public discussion, at least not intended to be so—why should the proceedings of those men, or the obligation by which they are connected, be expressed in the phraseology of studied concealment?

If men meet in secret, to talk over how best the French can invade this country, to what purpose is it that they take an engagement different in meaning? Common sense rejects the idea!

idea! Gentlemen, having stated these distinctions, I am led to the remaining divisions of the subject you are to consider. I admit, that because a man merely takes this obligation of union, it cannot prevent his becoming a traitor if he pleases; but the question for you to decide on would then be, whether every man who takes it must necessarily be a traitor? Independent of that engagement, have any super-added facts been proved against the prisoner? What is the evidence of O'Brien? What has he stated? Here, gentlemen, let me claim the benefits of that great privilege, which distinguishes trial by jury in this country from all the world.

Twelve men, not emerging from the must and cobwebs of a study, abstracted from human nature, or only acquainted with its extravagancies; but twelve men, conversant with life, and practiced in those feelings which mark the common and necessary intercourse between man and man. Such are you, gentlemen; how, then, does Mr. O'Brien's tale hang together? Look to its commencement. He walks along Thomas-street, in the open day (a street, not the least populous in this city,) and is accosted by a man, who, without any preface, tells him, he'll be murdered before he goes *half* the street, unless he becomes a united Irishman! Do you think this a probable story? Suppose any of you, gentlemen, be a united Irishman, or a free-

mason,

mason, or a friendly brother, and that you met me walking *innocently* along, just like Mr. O'Brien, and meaning *no harm*, would you say, "Stop, Mr. Curran, don't go further, you'll be murdered before you go half the street, if you do not become a united Irishman, a free mason, or a friendly brother." Did you ever hear so *coaxing* an invitation to *felony* as this? "Sweet Mr. James O'Brien! come in and save your precious life, come in and take an oath, or you'll be murdered before you go half the street!—Do, sweetest, dearest Mr. James O'Brien, come in, and do not risk your valuable existence." What a loss had he been to his king, whom he loves so marvellously! Well, what does poor Mr. O'Brien do? Poor, dear man, he stands petrified with the magnitude of his danger—all his members refuse their office—he can neither run from the danger, nor call out for assistance; his tongue cleaves to his mouth; and his feet incorporate with the paving stones—it is in vain that his expressive eye silently implores protection of the passenger; he yields at length, as greater men have done, and resignedly submits to his fate—he then enters the house, and being led into a room, a parcel of men *make faces* at him—but mark the metamorphosis—well may it be said that "Miracles will never cease,"—he who feared to resist in open air, and in the face of the public, becomes a *bravo*, when pent up in a room, and environed by *sixteen* men, and one is obliged to bar the door;

door, while another swears him, which, after some resistance, is accordingly done, and poor Mr. O'Brien becomes a united Irishman, for no earthly purpose whatever, but merely to save his sweet life! But this is not all—the pill so bitter to the precipieny of his loyal palate, must be washed down, and lest he should throw it off his stomach, he is filled up to the neck with beef and whiskey.—What further did they do?

Mr. O'Brien, thus persecuted, abused, and terrified, would have gone and lodged his sorrows in the sympathetic bosom of the major, but to prevent him even this little solace, they made him drunk.—The next evening they used him in the like barbarous manner, so that he was not only sworn against his will, but, poor man, he was made drunk against his inclination. Thus was he besieged with *united* beef-steaks and whiskey, and against such potent assailants not even Mr. O'Brien could prevail.

Whether all this whiskey that he has been *forced* to drink has produced the effect or not, Mr. O'Brien's loyalty is better than his memory. In the spirit of loyalty he became prophetic, and told to lord Portarlington the circumstances relative to the intended attack on the ordnance stores full three weeks before he had obtained the information through moral agency—Oh! honest James O'Brien!—honest James O'Brien! Let others

others vainly argue on logical truth and ethical falsehood, but if I can once fasten him to the ring of perjury, I will bait him at it, until his testimony shall fail of producing a verdict, although human nature were as vile and monstrous in you as she is in him! He has made a *mistake!* but surely no man's life is safe if such evidence were admissible; what argument can be founded on his testimony, when he swears he has perjured himself, and that any thing he says must be false; I must not believe him at all, and by a paradoxical conclusion, suppose, against "the "damnation" of his own testimony, that he is an *honest man!* [Another of the prisoner's counsel having here suggested something to Mr. Curran, he continued] My learned friend supposed me to be mistaken, and confounding the evidences of O'Brien and Clark, but I am not; I advert to what O'Brien said to lord Portarlington, respecting the attack on the arsenal.

Strongly as I feel my interest keep pace with that of my client, I would not defend him at the expence of truth; I seek not to make him worse than he is; whatever he may be, God Almighty convert his mind! May his reprobation,—but I beg his pardon, let your verdict stamp that currency on his credit; it will have more force than any casual remarks of mine. How this contradiction in Mr. O'Brien's evidence occurred I am at no loss to understand. He started from the beginning with an intention of informing

ing against some person, no matter against whom; and whether he ever saw the prisoner at the time he gave the information to lord Portarlington is a question; but none, that he fabricated the story for the purpose of imposing on the honest zeal of the law officers of the crown.

Having now glanced at a part of this man's evidence, I do not mean to part with him entirely, I shall have occasion to visit him again; but before I do, let me, gentlemen, once more impress upon your minds the observation which my colleague applied to the laws of high treason, that if they are not explained on the statute book, they are explained on the hearts of all honest men; and, as St. Paul says, "though they know not the law, they obey the statutes thereof." The essence of the charge submitted to your consideration tends to the dissolution of the connexion between Ireland and Great Britain.

I own, it is with much warmth and self-gratulation, that I feel this calumny answered by the attachment of every good man to the British constitution. I feel, I embrace its principles; and when I look on you, the proudest benefit of that constitution, I am relieved from the fears of advocacy, since I place my client under the influence of its sacred shade. This is not the idle sycophancy of words—It is not crying "Lord! Lord!" but doing "the will of my father who
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“is in heaven.” If my client were to be tried by a jury of Ludgate-hill shop-keepers, he would ere now be in his lodging. The law of England would not suffer a man to be cruelly butchered in a court of justice. The law of England recognises the possibility of villains thirsting for the blood of their fellow-creatures; and the people of Ireland have no cause to be incredulous of the fact. Thus it is, that in England two witnesses are essential to the proof of high treason; and the poorest wretch that crawls on British ground, has this protection between him and those *vampyres* who crawl out of their graves in search of human blood. If there be but one witness, there is the less possibility of contradicting him—he the less fears any detection of his murderous tale, having only infernal communication between him and the author of all evil; and when on the table, which he makes the altar of his sacrifice, however common men may be affected at sight of the innocent victim, it cannot be supposed that the prompter of his perjury will instigate him to retribution:—this is the law in England, and God forbid that Irishmen should so differ, in the estimation of the law, from Englishmen, that their blood is not equally worth preserving.

I do not, gentlemen, apply any part of this observation to you; you are Irishmen yourselves, and, I know you will act proudly and honestly. Why the law of England renders two witnesses necessary, and one witness insufficient,

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to take away the life of a man, on a charge of high-treason, founded on the principle of common sense, and common justice; for, unless the subject were guarded by this wise prevention, every wretch who could so pervert the powers of invention, as to trump up a tale of treason and conspiracy, would have it in his power to defraud the crown into the most abominable and afflicting acts of cruelty and oppression.

Gentlemen of the jury, though from the evidence which has been adduced against the prisoner they have lost their value, yet, had they been necessary, I must tell you, that my client came forward under a disadvantage of great magnitude, the absence of two witnesses, very material to his defence—I am not now at liberty to say, what, I am instructed, would have been proved by May, and Mr. Roberts—Why is not Mr. Roberts here?—Recollect the admission of O'Brien, that he threatened to *settle* him, and you will cease to wonder at his absence, when, if he came, the dagger was in preparation to be plunged into his heart.—I said Mr. Roberts was absent, I correct myself—No! in effect he is here, I appeal to the heart of that obdurate man, what would have been his testimony if he had dared to venture a personal evidence on this trial?—Gracious God! Is a tyranny of this kind to be borne with, where law is said to exist! Shall the horrors which surround the informer, the ferocity of his countenance, and the terrors of his voice,

voice, cast such a wide and appalling influence, that none dare approach and save the victim which he marks for ignominy and death!

Now, gentlemen, be pleased to look to the rest of O'Brien's testimony: he tells you there are one hundred and eleven thousand men, in one province added to ten thousand of the inhabitants of the metropolis, ready to assist the object of an invasion.—What! gentlemen, do you think there are so many in one province—so many in your city, combined against their country? At such a time as this, do you think it a wise thing to say, on the evidence of the abominable O'Brien, that if the enemy was to invade this country, there are one hundred and eleven thousand men ready to run to his standard? But this is not the most appalling view of the question:—For its importance, and its novelty, this is the most unprecedented trial in the annals of this country. I recollect none bearing any affinity to it, save that of the unhappy wanderer, Jackson: and, promising that I mean not the smallest allusion to the conduct of public measures in this country, are you prepared, I ask you seriously, are you prepared to embark your respectable characters in the same bottom with this *detestable INFORMER*?—Are you ready on such evidence to take away, one by one, the lives of an hundred thousand men, by prosecutions in a court of justice? Are you prepared, when O'Brien shall come forward against ten thousand
of

of your fellow-citizens, to assist him in digging the graves, which he has destined to receive them one by one? No! could your hearts yield for a moment to the suggestion, your own reflections would vindicate the justice of God, and the insulted character of man; you would fly from the secrets of your chamber, and take refuge in the multitude, from those "compunctious visitings," which meaner men could not look on without horror. Do not think I am speaking disrespectfully of you when I say that while an O'Brien may be found, it may be the lot of the proudest among you to be in the dock instead of the jury box; how then on such an occasion would any of you feel, if such evidence as has been heard this day were adduced against you?

The application affects you—you shrink from the imaginary situation—remember then the great mandate of your religion, and "do unto all men as you would they should do unto you." Why do you condescend to listen to me with such attention? why so anxious, if even from me any thing should fall tending to enlighten you on the present awful occasion? it is, because, bound by the sacred obligations of an oath, your heart will not allow you to forfeit it. Have you any doubt that it is the object of O'Brien to take down the prisoner for the reward that follows? Have you not seen with what more than instinctive keenness this blood-hound

has

has pursued his victim? how he has kept him in view from place to place until he hunts him through the avenues of the court to where the unhappy man stands now, hopeless of all succour but that which your verdict shall afford. I have heard of assassination by sword, by pistol, and by dagger, but here is a wretch who would dip the evangelists in blood—if he thinks he has not sworn his victim to death, he is ready to swear, without mercy and without end; but oh! do not, I conjure you, suffer him to take an oath; the arm of the murderer should not pollute the purity of the gospel; if he will swear, let it be on the knife, the proper symbol of his profession! Gentlemen, I am reminded of the tissue of abomination, with which this deadly calumniator, this O'Brien, has endeavoured to load so large a portion of your adult countrymen. He charges one hundred thousand Irishmen with the deliberate cruelty of depriving their fellow-creatures of their eyes, tongues, and hands! Do not believe the infamous slander! If I were told that there was in Ireland one man who could so debase human nature, I should hesitate to believe that even O'Brien were he. I have heard the argument made use of, that, in cases of a very foul nature, witnesses cannot be found free from imputation; this admitted in its fullest extent, it does not follow, that such evidence is to be accredited without other support. In such cases strong corroboration is necessary, and you would be the most helpless
and

and unfortunate men in the world, if you were under the necessity of attending to the solitary testimony of such witnesses. In the present prosecution two witnesses have been examined; for the respectable character of lord Portarlinton must not be polluted by a combination with O'Brien: if his lordship had told exactly the same story with O'Brien, it could not, however, be considered as corroborating O'Brien, who might as easily have uttered a falsehood to lord Portarlinton as he did here; but how much more strongly must you feel yourselves bound to reject his evidence, when, appealing to his lordship, he is materially contradicted, and his perjury established. With respect to Clark, he fixes no corroborative evidence whatever to the overt acts laid in the indictment. In endeavouring to slide in evidence of a conspiracy to murder Thompson, what might be the consequence if such a vile insinuation took possession of your minds—I am not blinking the question, I come boldly up to it—there is not the most remote evidence to connect the fate of Thompson with the present case, and nothing could shew the miserable paucity of his evidence more than seeking to support it on what did not at all relate to the charge. Five witnesses, as if by the interference of Providence, have discredited O'Brien to as many facts.

What did the simple and honest evidence of John Clarke of Blue-bell amount to against O'Brien?

O'Brien? It attached the double crime of artifice and perjury, and added robbery to the personification. See now in Dublin there are at this moment thousands and ten thousands of your fellow-citizens, anxiously by, waiting to know if you will convict the prisoner on the evidence of a wilful and corrupt perjurer, whether they are, each in his turn, to feel the fatal effects of his condemnation, or whether they are to find protection in the laws from the machinations of the *informer*. [Mr. Curran having been reminded to observe on the *recipe* for coining.] No! continued he, let him keep his *coining* for himself; it will not pass in common with other pieces—it suits him well, and is the proper emblem of his conscience, *copper washed*. Would you let such a fellow as this into your house as a servant under the impressions which his evidence must make on your minds?

If you would not take his services in exchange for wages, will you take his perjury in exchange for the life of a fellow creature? How will you feel, if the *assignats* of such evidence pass current for human blood! How will you bear the serrated and iron fangs of remorse, gnawing at your hearts, if, in the moment of abandonment, you suffer the victim to be massacred even in our arms. But has his perjury stopped here? What said the innocent countryman, Patrick Cavanagh?—Pursuing the even tenor of his way, in the paths of honest industry, he is in the act of

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fulfilling

fulfilling the decree of his Maker, he is earning his bread by the sweat of his brow; when this villain, less pure than the arch-fiend who brought this sentence of laborious action on mankind, enters the habitation of peace and humble industry, and, not content with dipping his tongue in perjury and blood, robs the poor man of two guineas! Can you wonder that he crept into the hole of the multitude when the witness would have developed him? do you wonder that he endeavoured to shun your eyes? •

At this moment even the bold and daring villainy of O'Brien stood abashed; he saw the eye of heaven in that of an innocent and injured man, perhaps the feeling was consummated by a glance from the dock—his heart bore testimony to his guilt, and he fled for the same! Gracious God! have you been so soiled in the vile intercourse, that you will give him a degree of credit, which you will deny to the candid and untainted evidence of so many honest men? But I have not done with him yet—while an atom of his vileness hangs together, I will separate it, lest you should chance to be taken by it. Was there a human creature brought forward to say he is any other than a villain? did his counsel venture to ask our witnesses, why they discredited him? did he dare to ask on what they established their assertions? no! by this time it is probable Mr. O'Brien is sick of investigation. You find him coiling himself in the scaly circles of his cautious perjury,

perjury, making anticipated battle against any one who should appear against him—but you see him sinking before the proof.

Do you feel, gentlemen, that I have been wantonly aspersing this man's character? Is he not a perjurer, a swindler? and that he is not a murderer, will depend on you. He assumes the character of a king's officer, to rob the king's people of their money, and afterwards, when their property fails him, he seeks to rob them of their lives! What say you to his habitual fellowship with baseness and fraud? He gives a recipe instructing to felony, and counterfeiting the king's coin, and when questioned about it, what is his answer?—why truly, that it was “only a *light, easy* way of getting money—only “a *little bit* of a *humbug*.” Good God! I ask you, has it ever come across you to meet with such a constellation of infamy!

Beside the perjury Clark had nothing to say, scarcely ground to turn on. He swears he was not in the court yesterday—what then? why, he has only perjured himself!—well, call *little skirmish* up again?—why, it was but a *mistake*! a little puzzled or so, and not being a *lawyer*, he could not tell whether he was in court or not! Mr. Clark is a much better evidence than my lord Portarlington—his lordship, in the improvidence of truth, bore a single testimony; while Clark, wisely providing against contingencies, swore at both sides of the gutter, but

the lesser perjurer is almost forgotten in the greater. No fewer than *five* perjuries are established against the *loyal* Mr. O'Brien, who has been "*united to every honest man*"—if indicted on any one of these, I must tell you, gentleman, that he could not be sworn in a court of justice; on the testimony of five witnesses, on his own testimony, he stands indicted before you; and, gentlemen, you must refuse him that credit, not to be squandered on such baseness and profligacy. The present cause takes in the entire character of your country, which may suffer in the eyes of all Europe by your verdict. This is the first prosecution of the kind brought forward to view.—It is the great experiment of the informers of Ireland, to ascertain how far they can carry on a traffick in human blood! This cannibal informer, this dæmon, O'Brien, greedy after human gore, has fifteen other victims in reserve, if, from your verdict, he receives the unhappy man at the bar! Fifteen more of your fellow-citizens are to be tried on his evidence! Be you then their saviours, let your verdict snatch them from his ravening maw, and interpose between yourselves and endless remorse!

I know, gentlemen, I should but insult you, if I were to apologize for detaining you thus long; if I have apology to make to any person, it is to my client, for thus delaying his acquittal. Sweet is the recollection of having done justice, in that hour, when the hand of death presses on the human heart! Sweet is the hope which it gives birth
to!

to! From you I demand that justice for my client, your innocent and unfortunate fellow-subject at the bar, and may you have for it a more lasting reward than the perishable crown we read of, which the ancients placed on the brow of him who saved in battle the life of a fellow-citizen.

If you should ever be assailed by the hand of the *informer*, may you find an all-powerful refuge in the example which you shall set this day; earnestly do I pray that you may never experience what it is to count the tedious hours in captivity, pining in the damps and gloom of the dungeon, while the wicked one is going about at large, seeking whom he may devour. There is another than a human tribunal, where the best of us will have occasion to look back on the little good we have done. In that awful trial, oh! may your verdict this day assure your hopes, and give you strength and consolation in the presence of an ADJUDGING GOD.

[*Here ended Mr. Curran's address : and to say that the reporter has done it justice, is a presumption that he disclaims. To keep pace with the rapid flow of his eloquence is impossible ; the hearer stands in astonishment and rapture, viewing the majesty of its course ; and he who most admires it, is least able to record it.*]

MR. FINNEY WAS ACQUITTED.

SPEECH

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

IN DEFENCE OF

MR. PETER FINNERTY,

ON FRIDAY, DECEMBER 22, 1797.

ABSTRACT OF THE INDICTMENT.

MR. PETER FINNERTY being put to the bar, the pannel of the petty jurors was called; there appeared above one hundred and forty names on it.

The clerk of the crown then gave Mr. Finnerty in charge of the jury upon an indictment, stating, “ That at a general assizes and general
“ goal delivery holden at Carrickfergus, in and
“ for the county of Antrim, on the seventeenth
“ of April, in the thirty-seventh year of the king,
“ before the honourable Mathias Finucane, one
“ of the judges of his majesty’s court of com-
“ mon pleas in Ireland, and the honourable
“ Denis George, one of the barons of his majes-
“ ty’s court of exchequer in Ireland, justices and
com-

“ commissioners assigned to deliver the goal of
 “ our said lord the king in and for the county
 “ of Antrim of the several prisoners and male-
 “ factors therein, one William Orr, late of Far-
 “ ranshane, in said county of Antrim, yeoman, was
 “ in lawful manner indicted for feloniously ad-
 “ ministering a cert^{ain} oath and engagement, up-
 “ on a book, to one Hugh Wheatly; which oath
 “ and engagement imported to bind the said Hugh
 “ Wheatly, who then and there took the same,
 “ to be of an association, brotherhood and so-
 “ ciety, formed for seditious purposes; and also
 “ for feloniously causing, procuring, and in-
 “ ducing said Hugh Wheatly to take an oath
 “ of said import last mentioned; and also for fe-
 “ loniously administering to said Hugh Wheatly
 “ another oath, importing to bind said Hugh
 “ Wheatly not to inform or give evidence against
 “ any brother, associate or confederate of a cer-
 “ tain society then and there formed; and also
 “ for feloniously causing, procuring and seducing
 “ said Hugh Wheatly to take an oath of said import
 “ last mentioned. And afterwards at Carrick-
 “ fergus aforesaid, before the right honourable
 “ Barry lord Yelverton, lord chief baron of his
 “ majesty’s court of exchequer in Ireland, and
 “ the honourable Tankerville Chamberlaine, one
 “ of his majesty’s justices of his court of chief
 “ pleas in Ireland, at a general assizes, &c. on the
 “ sixteenth day of September, in the thirty-se-
 “ venth year of the king, said William Orr, by
 “ the verdict of a certain jury of said county of
 “ Antrim,

“ Antrim, between our said lord the king and
 “ said William Orr, taken of and for the felony
 “ aforesaid in due manner, was tried, convicted,
 “ and attainted, and for the same was duly ex-
 “ ecuted; and that he, well knowing the pre-
 “ mises, but being a wicked and ill-disposed per-
 “ son, and of unquiet conversation and disposi-
 “ tion, and devising and intending to molest and
 “ disturb the peace and public tranquillity of
 “ this kingdom of Ireland; and to bring and
 “ draw the trial aforesaid, and the verdict there-
 “ on, for our said lord the king, against this
 “ William Orr given, and the due course of law
 “ in that behalf had, as aforesaid, into hatred,
 “ contempt, and scandal with all the liege sub-
 “ jects of our said lord the king, and to persuade,
 “ and cause the subjects of our said lord the
 “ king to believe that the trial aforesaid was un-
 “ duly had, and that the said William Orr did
 “ undeservedly die in manner aforesaid; and
 “ that his excellency John Jeffrys, earl Camden,
 “ the lord lieutenant of this kingdom, after the
 “ conviction aforesaid, ought to have extended
 “ to the said William Orr, his majesty’s gracious
 “ pardon of the felonies aforesaid; and that in
 “ not so extending such pardon, he, the said
 “ lord lieutenant, had acted inhumanly, wick-
 “ edly, and unjustly, and in a manner unwor-
 “ thy of the trust which had been committed
 “ to him by our said lord the king in that
 “ behalf; and that the said lord lieutenant,
 “ in

“ in his government of this kingdom, had acted
 “ unjustly, cruelly, and oppressively to his ma-
 “ jesty’s subjects therein: And to fulfil and
 “ bring to effect his most wicked and detestable
 “ devices and intentions aforesaid, on the twenty-
 “ sixth of October, in the thirty-seventh year of
 “ the king, at Mountrath-street aforesaid, city
 “ of Dublin aforesaid, falsely, wickedly, mali-
 “ ciously, and seditiously, did print and pub-
 “ lish, and cause and procure to be printed and
 “ published, in a certain newspaper entitled ‘ the
 “ ‘ press,’ a certain false, wicked, malicious, and
 “ seditious libel, of and concerning the said
 “ trial, conviction, attainder and execution of
 “ the said William Orr, as aforesaid, and of and
 “ concerning the said lord lieutenant and his
 “ government of this kingdom, and his majesty’s
 “ ministers employed by him in his government
 “ of this kingdom, according to the tenor and
 “ effect following to wit. ‘ The death of Mr.
 “ ‘ Orr (meaning the said execution of the said
 “ ‘ William Orr) the nation has pronounced one
 “ ‘ of the most sanguinary and savage acts that
 “ ‘ had disgraced the laws. In perjury, did you
 “ ‘ not hear, my lord, (meaning the said lord
 “ ‘ lieutenant) the verdict (meaning the verdict
 “ ‘ aforesaid) was given? Perjury accompanied
 “ ‘ with terror, as terror has marked every step
 “ ‘ of your government (meaning the govern-
 “ ‘ ment, of this kingdom aforesaid, by the said
 “ ‘ lord lieutenant.) Vengeance and desolation
 “ ‘ were to fall on those who would not plunge
 “ ‘ themselves

“ ‘themselves in blood. These were not strong
 “ ‘enough: Against the express law of the land,
 “ ‘not only was drink introduced to the jury
 “ ‘(meaning the jury aforesaid), but drunken-
 “ ‘ness itself, beastly and criminal drunkenness,
 “ ‘was employed to procure the murder of a bet-
 “ ‘ter man (meaning the said execution of the
 “ ‘said William Orr) than any that now surrounds
 “ ‘you (meaning the said lord lieutenant).’ And
 “ ‘in another part thereof, according to tenor
 “ ‘and effect following to wit. ‘Repentance, which
 “ ‘is a slow virtue, hastened however to declare
 “ ‘the innocence of the victim, (meaning the said
 “ ‘William Orr) the mischief (meaning the said
 “ ‘conviction of the said William Orr) which
 “ ‘perjury had done, truth now stepped forward to
 “ ‘repair. Neither was she too late, had huma-
 “ ‘nity formed any part of your counsels, (mean-
 “ ‘ing the counsels of the said lord lieutenant.)
 “ ‘Stung with remorse, on the return of reason,
 “ ‘part of his jury, (meaning the jury aforesaid)
 “ ‘solemnly and soberly made oath, that their
 “ ‘verdict (meaning the verdict aforesaid) had
 “ ‘been given under the unhappy influence of
 “ ‘intimidation and drink; and in the most seri-
 “ ‘ous affidavit that ever was made, by acknow-
 “ ‘ledging their crime, endeavoured to atone to
 “ ‘God and to their country, for the sin into
 “ ‘which they had been seduced.’ And in ano-
 “ ‘ther part thereof, according to the tenor and
 “ ‘effect following, to wit. ‘And though the in-
 “ ‘nocence of the accused (meaning the said
 “ ‘William

“ ‘ William Orr) had even remained doubtful, it
 “ ‘ was your duty (meaning the duty of the said
 “ ‘ lord lieutenant), my lord, and you (meaning
 “ ‘ the said lord lieutenant) had no exemption
 “ ‘ from that duty, to have interposed your
 “ ‘ arm, and saved him (meaning the said Wil-
 “ ‘ liam Orr) from the death (meaning the exe-
 “ ‘ cution aforesaid) that perjury, drunkenness,
 “ ‘ and reward had prepared for him (meaning
 “ ‘ the said William Orr). Let not the nation
 “ ‘ be told that you (meaning the lord lieute-
 “ ‘ nant) are a passive instrument in the hands
 “ ‘ of others; if passive you be, then is your
 “ ‘ office a shadow indeed. If an active instru-
 “ ‘ ment, as you ought to be, you (meaning the
 “ ‘ said lord lieutenant) did not perform the duty
 “ ‘ which the laws required of you; you (mean-
 “ ‘ ing the said lord lieutenant) did not exer-
 “ ‘ cise the prerogative of mercy; that mercy
 “ ‘ which the constitution had entrusted to you
 “ ‘ (meaning the said lord lieutenant) for the
 “ ‘ safety of the subject, by guarding him from
 “ ‘ the oppression of wicked men. Innocent it
 “ ‘ appears he (meaning the said William Orr)
 “ ‘ was, his blood (meaning the blood of the
 “ ‘ said William Orr) has been shed, and the
 “ ‘ precedent indeed is awful.’ And in another
 “ ‘ part thereof, according to the tenor and effect
 “ ‘ following, to wit. ‘ But suppose the evidence
 “ ‘ of Wheatly had been true, what was the
 “ ‘ offence of Mr. Orr (meaning the said Wil-
 “ ‘ liam Orr)? Not that he had taken an oath
 “ ‘ of

“ ‘ of blood and extermination—for then he had
 “ ‘ not suffered; but that he (meaning the said
 “ ‘ William Orr) had taken an oath of charity
 “ ‘ and of union, of humanity and of peace,
 “ ‘ he (meaning the said William Orr) has suf-
 “ ‘ fered. Shall we then be told that your go-
 “ ‘ vernment (meaning the government of this
 “ ‘ kingdom aforesaid, by the said lord lieute-
 “ ‘ nant) will conciliate public opinion, or that
 “ ‘ the people will not continue to look for a
 “ ‘ better?’ And in another part thereof, ac-
 “ ‘ cording to the tenor and effect following, that
 “ ‘ is to say: ‘ Is it to be wondered that a suc-
 “ ‘ cessor of lord Fitzwilliam should sign the
 “ ‘ death-warrant of Mr. Orr (meaning the said
 “ ‘ William Orr). Mr. Pitt had learned that a
 “ ‘ merciful lord lieutenant was unsuited to a
 “ ‘ government of violence. It was no compli-
 “ ‘ ment to the native clemency of a Camden,
 “ ‘ that he sent you (meaning the said lord
 “ ‘ lieutenant) into Ireland—and what has been
 “ ‘ our portion under the change, but massacre
 “ ‘ and rape, military murders, desolation and
 “ ‘ terror.’ And in another part thereof, ac-
 “ ‘ cording to the tenor and effect here following,
 “ ‘ that is to say: ‘ Feasting in your castle in the
 “ ‘ midst of your myrmidons and bishops, you
 “ ‘ (meaning the said lord lieutenant) have little
 “ ‘ concerned yourself about the expelled and
 “ ‘ miserable cottager, whose dwelling, at the
 “ ‘ moment of your mirth, was in flames, his
 “ ‘ wife and his daughter than under the viola-
 “ ‘ tion

“ ‘tion of some commissioned ravager, his son
 “ ‘agonizing on the bayonet, and his helpless
 “ ‘infants crying in vain for mercy. These
 “ ‘are lamentations that stain not the house of
 “ ‘carousal. Under intoxicated counsels (mean-
 “ ‘ing the counsels of the said lord lieutenant)
 “ ‘the constitution has reeled to its centre, jus-
 “ ‘tice is not only blind drunk, but deaf, like
 “ ‘Festus, to the words of soberness and truth.’
 “ And in another part thereof according to the
 “ tenor and effect here following, to wit. ‘ Let
 “ ‘however the awful execution of Mr. Orr
 “ ‘(meaning the execution aforesaid of the said
 “ ‘William Orr,) be a lesson to all unthinking
 “ ‘juries, and let them cease to flatter them-
 “ ‘selves that the soberest recommendation of
 “ ‘theirs, and of the presiding judge, can stop
 “ ‘the course of carnage, which sanguinary,
 “ ‘and, I do not fear to say, unconstitutional
 “ ‘laws have ordered to be loosed. Let them
 “ ‘remember that, like Macbeth, the servants
 “ ‘of the crown have waded so far in blood
 “ ‘that they find it easier to go on than to go
 “ ‘back:’ in contempt, &c. and against the
 “ peace.”

*There were other counts charging the publi-
cation in different ways.*

The evidence for the prosecution being gone through, and some witnesses having been produced on the part of the traverser, the examination of whom was successively stopt by the court, it appearing that they were examined to prove the truth of the facts stated in the publication.

MR. CURRAN.

Never did I feel myself so sunk under the importance of any cause: to speak to a question of this kind at any time would require the greatest talent and the most matured deliberation; but to be obliged without either of those advantages to speak to a subject that hath so deeply shaken the feelings of this already irritated and agitated nation, is a task that fills me with embarrassment and dismay.

Neither my learned colleague nor myself received any instruction or license until after the jury were actually sworn, and we both of us came here under an idea that we should not take any part in the trial. This circumstance I mention, not as an idle apology for an effort that cannot be the subject of either praise or censure, but as a call upon you, gentlemen of the jury, to supply the defects of my efforts, by a double exertion of your attention.

Perhaps

Perhaps I ought to regret that I cannot begin with any compliment, that may recommend me or my client personally to your favour. A more artful advocate would probably begin his address to you by compliments on your patriotism, and by felicitating his client upon the happy selection of his jury, and upon that unsuspected impartiality in which, if he was innocent, he must be safe. You must be conscious, gentlemen, that such idle verbiage as that could not convey either my sentiments or my client's upon that subject. You know and we know upon what occasion you are come, and by whom you have been chosen ; you are come to try an accusation professedly brought forward by the state, chosen by a sheriff who is appointed by our accuser.

(Here Mr. Attorney-general said, the sheriff was elected by the city, and that that observation was therefore unfounded.)

Be it so: I will not now stop to inquire whose property the city may be considered to be, but the learned gentleman seems to forget, that the election by that city, to whomsoever it may belong, is absolutely void without the approbation of that very lord lieutenant, who is the prosecutor in this case. I do not therefore repeat, gentlemen, that not a man of you has been called to that box by the voice of my client ; that he has had no power to object to a single man among you, though the crown has : and that you
yourselves

yourselves must feel under what influence you are chosen, or for what qualifications you are particularly selected. At a moment when this wretched land is shaken to its centre by the dreadful conflicts of the different branches of the community; between those who call themselves the partizans of liberty, and those that call themselves the partizans of power; between the advocates of infliction, and the advocates of suffering; upon such a question as the present, and at such a season, can any man be at a loss to guess from what class of character and opinion a friend to either party would resort for that jury, which was to decide between both? I trust, gentlemen, you know me too well to suppose that I could be capable of treating you with any personal disrespect; I am speaking to you in the honest confidence of your fellow-citizen. When I allude to those unworthy imputations of supposed bias, or passion, or partiality, that may have marked you out for your present situation, I do so in order to warn you of the ground on which you stand, of the point of awful responsibility in which you are placed, to your conscience, and to your country; and to remind you, that if you have been put into that box from any unworthy reliance on your complaisance or your servility, you have it in your power before you leave it to refute and to punish so vile an expectation by the integrity of your verdict; to remind you that you have it in your power to shew to as many Irishmen as yet linger in this country,

country, that all law and justice have not taken their flight with our prosperity and peace; that the sanctity of an oath, and the honesty of a juror are not yet dead amongst us; and that if our courts of justice are superseded by so many strange and terrible tribunals, it is not because they are deficient either in wisdom or virtue.

Gentlemen, it is necessary that you should have a clear idea, first of the law, by which this question is to be decided; secondly of the nature and object of the prosecution. As to the first, it is my duty to inform you that the law respecting libels has been much changed of late. —Heretofore, in consequence of some decisions of the judges in Westminster-hall, the jury was conceived to have no province but that of finding the truth of the innuendos and the fact of publication; but the libellous nature of that publication, as well as the guilt or innocence of the publication, were considered as exclusively belonging to the court. In a system like that of law, which reasons logically, no one erroneous principle can be introduced, without producing every other that can be deducible from it. If in the premises of any argument you admit one erroneous proposition, nothing but bad reasoning can save the conclusion from falsehood. So it has been with this encroachment of the court upon the province of the jury with respect to libels. The moment the court assumed as a

principle that they, the court, were to decide upon every thing but the publication; that is, that they were to decide upon the question of libel or no libel, and upon the guilt or innocence of the intention, which must form the essence of every crime; the guilt or innocence must of necessity have ceased to be material. You see, gentlemen, clearly, that the question of intention is a mere question of fact. Now the moment the court determined that the jury was not to try that question, it followed of necessity that it was not to be tried at all; for the court cannot try a question of fact. When the court said that it was not triable, there was no way of fortifying that extraordinary proposition, except by asserting that it was not material. The same erroneous reasoning carried them another step, still more mischievous and unjust: if the intention had been material, it must have been decided upon as a mere fact under all its circumstances. Of these circumstances the meanest understanding can see that the leading one must be the truth or the falsehood of the publication; but having decided the intention to be immaterial, it followed that the truth must be equally immaterial—and under the law so distorted, any man in England who published the most undeniable truth, and with the purest intention, might be punished for a crime in the most ignominious manner, without imposing on the prosecutor the necessity of proving his guilt, or getting any opportunity

portunity of shewing his innocence. I am not in the habit of speaking of legal institutions with disrespect; but I am warranted in condemning that usurpation upon the right of juries, by the authority of that statute, by which your jurisdiction is restored. For that restitution of justice the British subject is indebted to the splendid exertions of Mr. Fox and Mr. Erskine, —those distinguished supporters of the constitution and of the law; and I am happy to say to you, that though we can claim no share in the glory they have so justly acquired, we have the full benefit of their success; for you are now sitting under a similar act passed in this country, which makes it your duty and right to decide upon the entire question upon the broadest grounds and under all its circumstances, and of course to determine, by your verdict, whether this publication be a false and scandalous libel: false in fact, and published with the seditious purpose alleged of bringing the government into scandal, and instigating the people to insurrection.

Having stated to you, gentlemen, the great and exclusive extent of your jurisdiction, I shall beg leave to suggest to you a distinction that will strike you at first sight; and that is, the distinction between public animadversions upon the character of private individuals, and those which are written upon measures of government, and the

persons who conduct them. The former may be called personal, and the latter political publications. No two things can be more different in their nature, nor in the point of view in which they are to be looked on by a jury. The criminality of a mere personal libel consists in this, that it tends to a breach of the peace; it tends to all the vindictive paroxysms of exasperated vanity, or to the deeper or more deadly vengeance of irritated pride.—The truth is, few men see at once that they cannot be hurt so much as they think by the mere battery of a newspaper. They do not reflect that every character has a natural station, from which it cannot be effectually degraded, and beyond which it cannot be raised by the bawling of a news-hawker. If it is wantonly aspersed, it is but for a season, and that a short one, when it emerges like the moon from a passing cloud to its original brightness. It is right, however, that the law and that you should hold the strictest hand over this kind of public animadversion, that forces humility and innocence from their retreat into the glare of public view; that wounds and terrifies; that destroys the cordiality and the peace of domestic life; and that without eradicating a single vice, or single folly, plants a thousand thorns in the human heart.

In cases of that kind I perfectly agree with the law, as stated from the bench; in such cases, I hesitate not to think, that the truth of a charge ought not to justify its publication. If a private
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man is charged with a crime, he ought to be prosecuted in a court of justice, where he may be punished if it is true, and the accuser if it is false; but far differently do I deem of the freedom of political publication. The salutary restraint of the former species, which I talked of, is found in the general law of all societies whatever; but the more enlarged freedom of the press, for which I contend in political publication, I conceive to be founded in the peculiar nature of the British constitution, and to follow directly from the contract on which the British government hath been placed by the revolution. By the British constitution, the power of the state is a trust, committed by the people, upon certain conditions: by the violation of which, it may be abdicated by those who hold, and resumed by those who conferred it. The real security therefore of the British sceptre is the sentiment and opinion of the people, and it is consequently their duty to observe the conduct of the government; and it is the privilege of every man to give them full and just information upon that important subject. Hence the liberty of the press is inseparably twined with the liberty of the people. The press is the great public monitor; its duty is that of the historian and the witness, that "*nil falsi audeat, nil veri non audeat dicere*;" that its horizon shall extend to the farthest verge and limit of truth; that it shall speak truth to the king in the hearing of the people, and to the people in the hearing of the king; that it shall not
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perplex either the one or the other with false alarm, lest it lose its characteristic veracity, and become an unheeded warner of real danger; lest it should vainly warn them of that sin, of which the inevitable consequence is death. This, gentlemen, is the great privilege upon which you are to decide; and I have detained you the longer, because of the late change of the law, and because of some observations that have been made, which I shall find it necessary to compare with the principles I have now laid down.

And now, gentlemen, let us come to the immediate subject of the trial, as it is brought before you, by the charge in the indictment, to which it ought to have been confined; and also, as it is presented to you by the statement of the learned counsel, who has taken a much wider range than the mere limits of the accusation, and has endeavoured to force upon your consideration extraneous and irrelevant facts, for reasons which it is not my duty to explain. The indictment states simply that Mr. Finnerty has published a false and scandalous libel upon the lord lieutenant of Ireland, tending to bring his government into disrepute and to alienate the affections of the people; and one would have expected, that, without stating any other matter, the counsel for the crown would have gone directly to the proof of this allegation; but he has not done so; he has gone to a most extraordinary length indeed of preliminary observation, and an allusion to facts, and
sometimes

sometimes an assertion of facts, at which I own I was astonished, until I saw the drift of these allusions and assertions. Whether you have been fairly dealt with by him, or are now honestly dealt with by me, you must be judges. He has been pleased to say that this prosecution is brought against this letter signed Marcus, merely as a part of what he calls a system of attack upon the government by the paper called the PRESS. As to this I will only ask you whether you are fairly dealt with? Whether it is fair treatment to men upon their oaths, to insinuate to them, that the general character of a newspaper (and that general character founded merely upon the assertion of the prosecutor,) is to have any influence upon their minds, when they are to judge of a particular publication? I will only ask you, what men you must be supposed to be, when it is thought that even in a court of justice, and with the eyes of the nation upon you, you can be the dupes of that trite and exploded expedient, so scandalous of late in this country, of raising a vulgar and mercenary cry against whatever man, or whatever principle, it is thought necessary to put down; and I shall therefore merely leave it to your own pride to suggest upon what foundation it could be hoped, that a senseless clamour of that kind could be echoed back by the yell of a jury upon their oaths. I trust, you see that this is nothing to do with the question.

Gentlemen

Gentlemen of the jury, other matters have been mentioned, which I must repeat for the same purpose; that of shewing you that they have nothing to do with the question. The learned counsel has been pleased to say, that he comes forward in this prosecution as the real advocate for the liberty of the press, and to protect a mild and a merciful government from its licentiousness; and he has been pleased to add, that the constitution can never be lost while its freedom remains, and that its licentiousness alone can destroy that freedom. As to that, gentlemen, he might as well have said, that there is only one mortal disease of which a man can die; I can die the death inflicted by tyranny; and when he comes forward to extinguish this paper in the ruin of the printer, by a state prosecution, in order to prevent its dying of licentiousness, you must judge how candidly he is treating you, both in the fact and in the reasoning. Is it in Ireland, gentlemen, that we are told licentiousness is the only disease that can be mortal to the press? Has he heard of nothing else that has been fatal to the freedom of publication? I know not whether the printer of the Northern Star may have heard of such things in his captivity, but I know that his wife and his children are well apprized that a press may be destroyed in the open day, not by its own licentiousness, but by the licentiousness of a military force. As to the sincerity of the declaration that the state has prosecuted in order to assert the freedom of the press, it starts

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a train of thought, of melancholy retrospect and direful prospect, to which I did not think the learned counsel would have wished to commit your minds. It leads you naturally to reflect at what times, from what motives, and with what consequences, the government has displayed its patriotism, by prosecutions of this sort. As to the motives; does history give you a single instance in which the state has been provoked to these conflicts, except by the fear of truth, and by the love of vengeance? Have you ever seen the rulers of any country bring forward a prosecution from motives of filial piety, for libels upon their departed ancestors? Do you read that Elizabeth directed any of those state prosecutions against the libels which the divines of her times had written against her catholic sister, or against the other libels which the same gentlemen had written against her protestant father? No, gentlemen, we read of no such thing; but we know she did bring forward a prosecution from motives of personal resentment; and we know that a jury was found time-serving and mean enough to give a verdict, which she was ashamed to carry into effect. I said the learned counsel drew you back to the times that have been marked by these miserable conflicts. I see you turn your thoughts to the reign of the second James. I see you turn your eyes to those pages of governmental abandonment, of popular degradation, of expiring liberty, of merciless and sanguinary persecution; to that miserable period, in which
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the fallen and abject state of man might have been almost an argument in the mouth of the atheist and the blasphemer against the existence of an all-just and an all-wise First Cause; if the glorious æra of the revolution that followed it had not refuted the impious inference, by shewing that if man descends, it is not in his own proper motion; that it is with labour and with pain, and that he can continue to sink only until, by the force and pressure of the descent, the spring of his immortal faculties acquires that recuperative energy and effort that hurries him as many miles aloft—he sinks but to rise again. It is at that period that the state seeks for shelter in the destruction of the press; it is in a period like that, that the tyrant prepares for an attack upon the people, by destroying the liberty of the press; by taking away that shield of wisdom and of virtue, behind which the people are invulnerable; in whose pure and polished convex, ere the lifted blow has fallen, he beholds his own image, and is turned into stone. It is at those periods that the honest man dares not speak, because truth is too dreadful to be told; it is then humanity has no ears, because humanity has no tongue. It is then the proud man scorns to speak, but like a physician baffled by the wayward excesses of a dying patient, retires indignantly from the bed of an unhappy wretch, whose ear is too fastidious to bear the sound of wholesome advice, whose palate is too debauched to bear the salutary bitter of the medicine that might redeem him; and therefore

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leaves him to the felonious piety of the slaves that talk to him of life, and strip him before he is cold.

I do not care, gentlemen, to exhaust too much of your attention, by following this subject through the last century with much minuteness; but the facts are too recent in your mind not to shew you, that the liberty of the press and the liberty of the people sink and rise together; that the liberty of speaking and the liberty of acting have shared exactly the same fate. You must have observed in England that their fate has been the same in the successive vicissitudes of their late depression; and sorry I am to add, that this country has exhibited a melancholy proof of their inseparable destiny, through the various and further stages of deterioration down to the period of their final extinction; when the constitution has given place to the sword, and the only printer in Ireland, who dares to speak for the people, is now in the dock.

Gentlemen, the learned counsel has made the real subject of this prosecution so small a part of his statement, and has led you into so wide a range, certainly as necessary to the object, as inapplicable to the subject of this prosecution; that I trust you will think me excusable in having somewhat followed his example. Glad am I to find that I have the authority of the same example for coming at last to the subject of this trial. I agree with the learned counsel, that the charge

charge made against the lord lieutenant of Ireland is that of having grossly and inhumanly abused the royal prerogative of mercy, of which the king is only the trustee for the benefit of the people. The facts are not controverted. It has been asserted that their truth or falsehood is indifferent, and they are shortly these, as they appear in this publication.

William Orr was indicted for having administered the oath of a united Irishman. Every man now knows what that oath is: that it is simply an engagement, first, to promote a brotherhood of affection among men of all religious distinctions; secondly, to labour for the attainment of a parliamentary reform; and thirdly, an obligation of secrecy, which was added to it when the convention law made it criminal and punishable to meet by any public delegation for that purpose. After remaining upwards of a year in goal Mr. Orr was brought to his trial; was prosecuted by the state; was sworn against by a common informer of the name of Wheatly, who himself had taken the obligation, and was convicted under the insurrection act, which makes the administering such an obligation felony of death—the jury recommended Mr. Orr to mercy; the judge, with an humanity becoming his character, transmitted the recommendation to the noble prosecutor in this case. Three of the jurors made solemn affidavit in court that liquor had been conveyed into their box; that they were brutally threatened

threatened by some of their fellow-jurors with capital prosecution if they did not find the prisoner guilty; and that under the impression of those threats, and worn down by watching and intoxication, they had given a verdict of guilty against him, though they believed him in their conscience to be innocent. That further enquiries were made, which ended in a discovery of the infamous life and character of the informer; that a respite was therefore sent once, and twice, and thrice, to give time, as Mr. Attorney-general has stated, for his excellency to consider whether mercy *could* be extended to him or not; and that, with a knowledge of all these circumstances, his excellency did finally determine that mercy should not be extended to him, and that he was accordingly executed upon that verdict. Of this publication, which the indictment charges to be false and seditious, Mr. Attorney-general is pleased to say, that the design of it is to bring the courts of justice into contempt. As to this point of fact, gentlemen, I beg to set you right.

To the administration of justice, so far as it relates to the judges, this publication has not even an allusion in any part mentioned in this indictment; it relates to a department of justice, that cannot begin until the duty of the judge closes. Sorry should I be, that, with respect to this unfortunate man, any censure should be flung on those judges who presided at this trial, with the mildness and temper that became them,
upon

upon so awful an occasion as the trial of life and death. Sure am I, that if they had been charged with inhumanity or injustice, and if they had condescended at all to prosecute the reviler, they would not have come forward in the face of the public to say, as has been said this day, that it was immaterial whether the charge was true or not. Sure I am, their first object would have been to shew that it was false, and readily should I have been an eye witness of the fact, to have discharged the debt of ancient friendship, of private respect, and of public duty, and upon my oath to have repelled the falsehood of such an imputation. Upon this subject, gentlemen, the presence of those venerable judges restrains what I might otherwise have said, nor should I have named them at all if I had not been forced to do so, and merely to undeceive you if you have been made to believe their characters to have any community of cause whatever with the lord lieutenant of Ireland. To him alone it is confined, and against him the charge is made, as strongly, I suppose, as the writer could find words to express it, that the viceroy of Ireland has cruelly abused the prerogative of royal mercy, in suffering a man under such circumstances to perish like a common malefactor. For this Mr. Attorney-general calls for your conviction as a false and scandalous libel, and after stating himself every fact that I have repeated to you, either from his statement, or from the evidence, he tells you that you ought to find it false and scandalous

dalous, though he almost in words admits that it is not false, and has resisted the admission of the evidence by which we offered to prove every word of it to be true.

And here, gentlemen, give me leave to remind you of the parties before you. The traverser is a printer, who follows that profession for bread, and who at a time of great public misery and terror, when the people are restrained by law from debating under any delegated form; when the few constituents that we have are prevented by force from meeting in their own persons, to deliberate or to petition; when every other newspaper in Ireland is put down by force, or purchased by the administration; (though here, gentlemen, perhaps I ought to beg your pardon for stating without authority—I recollect when we attempted to examine as to the number of newspapers in the pay of the castle, that the evidence was objected to,) at a season like this, Mr. Finnerty has had the courage, perhaps the folly, to print the publication in question, from no motive under heaven of malice or vengeance, but in the mere duty which he owes to his family, and to the public. His prosecutor is the king's minister in Ireland; in that character does the learned gentleman mean to say, that his conduct is not a fair subject of public observation? where does he find his authority for that, in the law or practice of the sister country? have the virtues, or the exalted station, or the general love of his people preserved the sacred person even

even of the royal master of the prosecutor, from the asperity and the intemperance of public censure, unfounded as it ever must be, with any personal respect to his majesty, in justice or truth? have the gigantic abilities of Mr. Pitt, have the more gigantic talents of his great antagonist, Mr. Fox, protected either of them from the insolent familiarity, and for aught we know, the injustice with which writers have treated them? What latitude of invective has the king's minister escaped upon the subject of the present war? Is there an epithet of contumely, or of reproach, that hatred or that fancy could suggest, that is not publicly lavished upon them? Do you not find the words, advocate of despotism, robber of the public treasure, murderer of the king's subjects, debaucher of the public morality, degrader of the constitution, tarnisher of the British empire, by frequency of use lose all meaning whatsoever, and dwindle into terms, not of any peculiar reproach, but of ordinary appellation? And why, gentlemen, is this permitted in that country? I'll tell you why;—because in that country they are yet wise enough to see, that the measures of the state are the proper subject for the freedom of the press; that the principles relating to personal slander do not apply to rulers or to ministers; that to publish an attack upon a public minister, without any regard to truth, but merely because of its tendency to a breach of the peace, would be ridiculous in the extreme. What breach of the peace, gentlemen, I pray you in such a case? is it the tendency of such publications

publications to provoke Mr. Pitt or Mr. Dundas to break the head of the writer, if they should happen to meet him? No, gentlemen, in that country this freedom is exercised, because the people feel it to be their right; and it is wisely suffered to pass by the state, from a consciousness that it would be vain to oppose it; a consciousness confirmed by the event of every incautious experiment. It is suffered to pass from a conviction, that, in a court of justice at least, the bulwarks of the constitution will not be surrendered to the state, and that the intended victim, whether clothed in the humble guise of honest industry, or decked in the honours of genius, and virtue, and philosophy, whether a Hardy, or a Tooke, will find certain protection in the honesty and spirit of an English jury.

But, gentlemen, I suppose Mr. Attorney-general will scarcely wish to carry his doctrine altogether so far. Indeed, I remember, he declared himself a most zealous advocate for the liberty of the press. I may, therefore, even according to him, presume to make some observations on the conduct of the existing government. I should wish to know how far he supposes it to extend; is it to the composition of lampoons and madrigals, to be sung down the grates by ragged ballad mongers to kitchen-maids and footmen? I will not suppose that he means to confine it to the ebullitions of Billingsgate, to those cataracts of ribaldry and scurrility, that are daily spouting upon
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the miseries of our wretched fellow-sufferers, and the unavailing efforts of those who have vainly laboured in their cause. I will not suppose that he confines it to the poetic licence of a birth-day ode; the *laureat* would not use such language! In which case I do not entirely agree with him, that the truth or the falsehood is as perfectly immaterial to the law, as it is to the *laureat*; as perfectly unrestrained by the law of the land, as it is by any law of decency or shame, of modesty or decorum. But as to the privilege of censure or blame, I am sorry that the learned gentleman has not favoured you with his notion of the liberty of the press. Suppose an Irish viceroy acts a very little absurdly—may the press venture to be respectfully comical upon that absurdity? The learned counsel does not, at least in terms, give a negative to that. But let me treat you honestly, and go further, to a more material point: suppose an Irish viceroy does an act that brings scandal upon his master—that fills the mind of a reasonable man with the fear of approaching despotism; that leaves no hope to the people of preserving themselves and their children from chains, but in common confederacy for common safety. What is that honest man in that case to do? I am sorry *the right honourable advocate for the liberty of the press* has not told you his opinion, at least in any express words. I will therefore venture to give you my far humbler thought upon the subject. I think an honest man ought to tell the people frankly and boldly of their peril; and I
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must say I can imagine no villainy greater than that of his holding a traitorous silence at such a crisis, except the villainy and baseness of prosecuting him, or of finding him guilty for such an honest discharge of his public duty. And I found myself on the known principle of the revolution of England, namely, that the crown itself may be abdicated by certain abuses of the trust reposed, and that there are possible excesses of arbitrary power, which is not only the right but the bounden duty of every honest man to resist at the risque of his fortune and his life. Now, gentlemen, if this reasoning be admitted, and it cannot be denied, if there be any possible event in which the people are obliged to look only to themselves, and are justified in doing so, can you be so absurd as to say that it is lawful to the people to act upon it when it unfortunately does arrive, but that it is criminal in any man to tell them that the miserable event has actually arrived, or is imminently approaching? Far am I, gentlemen, from insinuating that (extreme as it is) our misery has been matured into any deplorable crisis of this kind, from which I pray that the almighty God may for ever preserve us! But I am putting my principles upon the strongest ground, and most favourable to my opponents, namely, that it never can be criminal to say any thing of the government but what is false, and I put this in the extreme in order to demonstrate to you *à fortiori*, that the privilege of speaking truth to the people which holds in the last extremity, must

also obtain in every stage of inferior importance; and that, however a court may have decided, before the late act, that the truth was immaterial in case of libel, since that act no honest jury can be governed by such a principle.

Be pleased now, gentlemen, to consider the grounds upon which this publication is called a libel, and criminal. Mr. Attorney-general tells you it tends to excite sedition and insurrection. Let me again remind you, that the truth of this charge is not denied by the noble prosecutor. What is it then, that tends to excite sedition and insurrection? "The act that is charged upon the prosecutor, and is not attempted to be denied." And, gracious God! gentlemen of the jury, is the public statement of the king's representative this? "I have done a deed that must fill the mind of every feeling or thinking man with horror and indignation, that must alienate every man that knows it from the king's government, and endanger the separation of this distracted empire; the traverser has had the guilt of publishing this fact, which I myself acknowledge, and I pray you to find him guilty." Is this the case which the lord lieutenant of Ireland brings forward? Is this the principle for which he ventures, at a dreadful crisis like the present, to contend in a court of justice? Is this the picture which he wishes to hold out of himself to the justice and humanity of his own countrymen? Is this the history which he wishes to be read by the poor Irishman

Irishmen of the south and of the north, by the sister nation, and the common enemy?

With the profoundest respect, permit me humbly to defend his excellency, even against his own opinion. The guilt of this publication he is pleased to think consists in this, that it tends to insurrection. Upon what can such a fear be supported? After the multitudes that have perished in this unhappy nation within the last three years, unhappiness which has been borne with a patience not paralleled in the history of nations, can any man suppose that the fate of a single individual could lead to resistance or insurrection? But suppose that it might—what ought to be the conduct of an honest man? Should it not be to apprize the government and the country of the approaching danger? Should it not be to say to the viceroy, you will drive the people to madness if you persevere in such bloody councils, you will alienate the Irish nation, you will distract the common force, and you will invite the common enemy. Should not an honest man say to the people, the measure of your affliction is great, but you need not resort for remedy to any desperate expedients. If the king's minister is defective in humanity or wisdom, his royal master, and your beloved sovereign, is abounding in both; at such a moment, can you be so senseless as not to feel, that any one of you ought to hold such language, or is it possible you could be so infatuated, as to punish the man who was honest enough to hold it?

it? Or is it possible that you could bring yourselves to say to your country, that at such a season the press ought to sleep upon its post, or to act like the perfidious watchman on his round, that sees the villain wrenching the door, or the flames bursting from the windows, while the inhabitant is wrapt in sleep, and cries out that “ ’tis past five o’clock, the morning is fair, and “ all well.”

On this part of the case I shall only put one question to you. I do not affect to say it is similar in all its points; I do not affect to compare the humble fortunes of Mr. Orr with the sainted names of Russel or Sydney; still less am I willing to find any likeness between the present period and the year 1683. But I will put a question to you, completely parallel in principle. When that unhappy and misguided monarch had shed the sacred blood, which their noble hearts had matured into a fit cement of revolution, if any honest Englishman had been brought to trial for daring to proclaim to the world his abhorrence of such a deed; what would you have thought of the English jury that could have said, we know in our hearts what he said was true and honest, but we will say upon our oaths that it was false and criminal, and we will by that base subserviency add another item to the catalogue of public wrongs, and another argument for the necessity of an appeal to heaven for redress.

Gentlemen,

Gentlemen, I am perfectly aware that what I say may be easily misconstrued, but if you listen to me with the same fairness that I address you, I cannot be misunderstood. When I shew you the full extent of your political rights and remedies; when I answer those slanderers of British liberty, who degrade the monarch into a despot, who pervert the steadfastness of law into the waywardness of will; when I shew you the inestimable stores of political wealth so dearly acquired by our ancestors, and so solemnly bequeathed; and when I shew you how much of that precious inheritance has yet survived all the prodigality of their posterity, I am far from saying that I stand in need of it all upon the present occasion. No, gentlemen, far am I indeed from such a sentiment. No man more deeply than myself deplores the present melancholy state of our unhappy country. Neither does any man more fervently wish for the return of peace and tranquillity, through the natural channels of mercy and of justice. I have seen too much of force and of violence to hope much good from the continuance of them on one side, or retaliation from another. I have of late seen too much of political rebuilding, not to have observed that to demolish is not the shortest way to repair. It is with pain and anguish that I should search for the miserable right of breaking ancient ties, or going in quest of new relations, or untried adventures. No, gentlemen, the case of my client rests not upon these

these sad privileges of despair. I trust that as to the fact, namely, the intention of exciting insurrection, you must see it cannot be found in this publication; that it is the mere idle, unsupported imputation of malice, or panic, or falsehood. And that as to the law, so far has he been from transgressing the limits of the constitution, that whole regions lie between him and those limits which he has not trod; and which I pray to heaven it may never be necessary for any of us to tread.

Gentlemen, Mr. Attorney-general has been pleased to open another battery upon this publication, which I do trust I shall silence, unless I flatter myself too much in supposing that hitherto my resistance has not been utterly unsuccessful. He abuses it for the foul and insolent familiarity of its address. I do clearly understand his idea; he considers the freedom of the press to be the license of offering that paltry adulation which no man ought to stoop to utter or to hear; he supposes the freedom of the press ought to be like the freedom of a king's jester, who instead of reproving the faults of which majesty ought to be ashamed, is base and cunning enough, under the mask of servile and adulatory censure, to stroke down and pamper those vices of which it is foolish enough to be vain.—He would not have the press presume to tell the viceroy, that the prerogative of mercy is a trust for the benefit of the subject,
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and not a gaudy feather stuck into the diadem to shake in the wind, and by the waving of the gorgeous plumage to amuse the vanity of the wearer.—He would not have it to say to him that the discretion of the crown as to mercy is like the discretion of a court of justice as to law, and that in the one case as well as the other, wherever the propriety of the exercise of it appears, it is equally a matter of right. He would have the press all fierceness to the people, and all sycophancy to power; he would have it consider the mad and phrenetic depopulations of authority like the awful and inscrutable dispensations of Providence, and say to the unfeeling and despotic spoiler in the blasphemed and insulted language of religious resignation—the Lord hath given, and the Lord hath taken away, blessed be the name of the Lord!!! But let me condense the generality of the learned gentleman's invective into questions that you can conceive. Does he mean that the air of this publication is rustic and uncourtly? Does he mean, that when Marcus presumed to ascend the steps of the castle, and to address the viceroy, he did not turn out his toes as he ought to have done? But, gentlemen, you are not a jury of dancing-masters:—or does the learned gentleman mean that the language is coarse and vulgar? If this be his complaint, my client has but a poor advocate. I do not pretend to be a mighty grammarian or a formidable critic, but I would beg leave to suggest to you in serious humility, that

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a free press can be supported only by the ardour of men who feel the prompting sting of real or supposed capacity; who write from the enthusiasm of virtue, or the ambition of praise, and over whom if you exercise the rigour of a grammatical censorship, you will inspire them with as mean an opinion of your integrity as of your wisdom, and inevitably drive them from their post—and if you do, rely upon it, you will reduce the spirit of publication, and with it the press of this country, to what it for a long interval has been, the register of births, and fairs, and funerals, and the general abuse of the people and their friends.

But, gentlemen, in order to bring this charge of insolence and vulgarity to the test, let me ask you, whether you know of any language which could have adequately described the idea of mercy denied, where it ought to have been granted, or of any phrase vigorous enough to convey the indignation which an honest man would have felt upon such a subject? Let me beg of you for a moment to suppose that any one of you had been the writer of this very severe expostulation with the viceroy, and that you had been the witness of the whole progress of this never to be forgotten catastrophe. Let me suppose that you had known the charge upon which Mr. Orr was apprehended, the charge of abjuring that bigotry which had torn and disgraced his country, of pledging himself
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to restore the people of his country to their place in the constitution, and of binding himself never to be the betrayer of his fellow-labourers in that enterprise; that you had seen him upon that charge removed from his industry, and confined in a gaol; that through the slow and lingering progress of twelve tedious months you had seen him confined in a dungeon, shut out from the common use of air and of his own limbs; that day after day you had marked the unhappy captive cheered by no sound but the cries of his family, or the clinking of chains; that you had seen him at last brought to his trial; that you had seen the vile and perjured informer deposing against his life; that you had seen the drunken, and worn out, and terrified jury give in a verdict of death; that you had seen the same jury, when their returning sobriety had brought back their conscience, prostrate themselves before the humanity of the bench, and pray that the mercy of the crown might save their characters from the reproach of an involuntary crime, their consciences from the torture of eternal self-condemnation, and their souls from the indelible stain of innocent blood. Let me suppose that you had seen the respite given, and that contrite and honest recommendation transmitted to that seat where mercy was presumed to dwell; that new and before unheard of crimes are discovered against the informer; that the royal mercy seems to relent, and that a new respite is sent to the prisoner; that time

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is taken, as the learned counsel for the crown has expressed it, to see whether mercy could be extended or not! that, after that period of lingering deliberation passed, a third respite is transmitted; that the unhappy captive himself feels the cheering hope of being restored to a family that he had adored, to a character that he had never stained, and to a country that he had ever loved; that you had seen his wife and children upon their knees, giving those tears to gratitude, which their locked and frozen hearts could not give to anguish and despair, and imploring the blessings of eternal providence upon his head, who had graciously spared the father, and restored him to his children; that you had seen the olive branch sent into his little ark, but no sign that the waters had subsided. “Alas! nor wife, nor children more shall he behold, nor friends, nor sacred home!” No seraph mercy unbars his dungeon, and leads him forth to light and life; but the minister of death hurries him to the scene of suffering and of shame; where, unmoved by the hostile array of artillery and armed men collected together, to secure, or to insult, or to disturb him, he dies with a solemn declaration of his innocence, and utters his last breath in a prayer for the liberty of his country. Let me now ask you, if any of you had addressed the public ear upon so foul and monstrous a subject, in what language would you have conveyed the feelings of horror and indignation?—would you have stooped to the meanness of qualified complaint?

complaint?—would you have been mean enough?—but I entreat your forgiveness—I do not think meanly of you; had I thought so meanly of you, I could not suffer my mind to commune with you as it has done; had I thought you that base and vile instrument, attuned by hope and by fear into discord and falsehood, from whose vulgar string no groan of suffering could vibrate, no voice of integrity or honour could speak, let me honestly tell you, I should have scorned to fling my hand across it; I should have left it to a fitter minstrel: if I do not therefore grossly err in my opinion of you, I could use no language upon such a subject as this, that must not lag behind the rapidity of your feelings, and that would not disgrace those feelings, if it attempted to describe them.

Gentlemen, I am not unconscious that the learned counsel for the crown seemed to address you with a confidence of a very different kind; he seemed to expect from you a kind and respectful sympathy with the feelings of the castle, and with the griefs of chided authority. Perhaps, gentlemen, he may know you better than I do; if he does he has spoken to you as he ought; he has been right in telling you, that if the reprobation of this writer is weak, it is because his genius could not make it stronger; he has been right in telling you that his language has not been braided and festooned as elegantly as it might, that he has not pinched the miserable plaits of his phraseology, nor placed his patches
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and feathers with that correctness of millinery which became so exalted a person. If you agree with him, gentlemen of the jury, if you think that the man, who ventures at the hazard of his own life to rescue from the deep the drowned honour of his country, must not presume upon the guilty familiarity of plucking it up by the locks, I have no more to say; do a courteous thing. Upright and honest jurors, find a civil and obliging verdict against the printer! And when you have done so march through the ranks of your fellow citizens to your own homes, and bear their looks as they pass along; retire to the bosom of your families and your children, and when you are presiding over the morality of the parental board, tell those infants who are to be the future men of Ireland, the history of this day. Form their young minds by your precepts and confirm those precepts by your own example; teach them how discretely allegiance may be perjured on the table, or loyalty be foresworn in the jury-box; and when you have done so, tell them the story of Orr; tell them of his captivity, of his children, of his crime, of his hopes, of his disappointments, of his courage and of his death; and when you find your little hearers hanging from your lips, when you see their eyes overflow with sympathy and sorrow, and their young hearts bursting with the pangs of anticipated orphanage, tell them that you had the boldness and the justice to stigmatize the monster—who had dared to publish the transaction! Gentlemen, I believe I told you before that the
conduct

conduct of the viceroy was a small part indeed of the subject of this trial. If the vindication of his mere personal character had been, as it ought to have been, the sole object of this prosecution, I should have felt the most respectful regret at seeing a person of his high consideration come forward in a court of public justice, in one and the same breath to admit the truth, and to demand the punishment of a publication like the present; to prevent the chance he might have had of such an accusation being disbelieved, and by a prosecution like this to give to the passing stricture of a newspaper that life and body, and action and reality, that proves it to all mankind and makes the record of it indelible. Even as it is I do own I feel the utmost concern that his name should have been soiled by being mixed in a question of which it is the mere pretext and scape-goat. Mr. Attorney-general was too wise to state to you the real question or the object which he wished to be answered by your verdict. Do you remember that he was pleased to say that this publication was a base and foul misrepresentation of the virtue and wisdom of the government, and a false and audacious statement to the world that the king's government in Ireland was base enough to pay informers for taking away the lives of the people! When I heard this statement to-day, I doubted whether you were aware of its tendency or not. It is now necessary that I should explain it to you more at large.

You

You cannot be ignorant of the great conflict between prerogative and privilege which hath convulsed the country for the last fifteen years; when I say privilege, you cannot suppose that I mean the privilege of the house of commons, I mean the privileges of the people. You are no strangers to the various modes by which the people laboured to approach their object. Delegations, conventions, remonstrances, resolutions, petitions to the parliament, petitions to the throne. It might not be decorous in this place to state to you with any sharpness the various modes of resistance that were employed on the other side; but you all of you seem old enough to remember the variety of acts of parliament that have been made, by which the people were deprived, session after session, of what they had supposed to be the known and established fundamentals of the constitution; the right of public debate, the right of public petition, the right of bail, the right of trial, the right of arms for self-defence; until the last, even the relics of popular privilege became superseded by a military force; the press extinguished; and the state found its last entrenchment in the grave of the constitution. As little can you be strangers to the tremendous confederations of hundreds of thousands of our countrymen, of the nature and the objects of which such a variety of opinions have been propagated and entertained.

The writer of this letter had presumed to censure the recall of lord Fitzwilliam, as well as the measure

sures of the present viceroy. Into this subject I do not enter; but you cannot yourselves forget that the conciliatory measures of the former noble lord had produced an almost miraculous unanimity in this country; and much do I regret, and sure I am that it is not without pain you can reflect, how unfortunately the conduct of his successor has terminated. His intentions might have been the best; I neither know them nor condemn them, but their terrible effects you cannot be blind to. Every new act of coercion has been followed by some new symptoms of discontent, and every new attack provoked some new paroxysm of resentment or some new combination of resistance. In this deplorable state of affairs, convulsed and distracted within, and menaced by a most formidable enemy from without, it was thought that public safety might be found in union and conciliation, and repeated applications were made to the parliament of this kingdom for a calm enquiry into the complaints of the people; these applications were made in vain. Impressed by the same motives Mr. Fox brought the same subject before the commons of England, and ventured to ascribe the perilous state of Ireland to the severity of its government. Even his stupendous abilities, excited by the liveliest sympathy with our sufferings, and animated by the most ardent zeal to restore the strength with the union of the empire, were repeatedly exerted without success. The fact of discontent was denied; the fact of coercion was denied; and the consequence was, the coercion

ercion became more implacable, and the discontent more threatening and irreconcilable. A similar application was made in the beginning of this session in the lords of Great Britain by our illustrious countryman, of whom I do not wonder that my learned friend should have observed, how much virtue can fling pedigree into the shade; or how much the transient honour of a body inherited from man, is obscured by the lustre of an intellect derived from God. He, after being an eye-witness of this country, presented the miserable picture of what he had seen; and to the astonishment of every man in Ireland, the existence of those facts was ventured to be denied; the conduct of the present viceroy was justified and applauded; and the necessity of continuing that conduct was insisted upon, as the only means of preserving the constitution, the peace, and the prosperity of Ireland. The moment the learned counsel had talked of this publication as a false statement of the conduct of the government, and the condition of the people, no man could be at a loss to see that the awful question, which had been dismissed from the commons of Ireland, and from the lords and commons of Great Britain, is now brought forward to be tried by a side wind, and in a collateral way, by a criminal prosecution.

I tell you therefore, gentlemen of the jury, it is not with respect to Mr. Orr that your verdict is now sought; you are called upon on your oaths to say, that the government is wise and merciful,

merciful, that the people are prosperous and happy, that military law ought to be continued, that the British constitution could not with safety be restored to his country, and that the statements of a contrary import by your advocates in either country were libellous and false. I tell you these are the questions, and I ask you, can you have the front to give the expected answer in the face of a community who know the country as well as you do? Let me ask you, how could you reconcile with such a verdict, the goals, the tenders, the gibbets, the conflagrations, the murders, the proclamations that we hear of every day in the streets, and see every day in the country? What are the processions of the learned counsel himself circuit after circuit? Merciful God! what is the state of Ireland, and where shall you find the wretched inhabitant of this land! You may find him perhaps in gaol, the only place of security, I had almost said of ordinary habitation; you may see him flying by the conflagration of his own dwelling; or you may find his bones bleaching on the green fields of his country; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests, less savage than his persecutors, that drift him to a returnless distance from his family and his home. And yet with these facts ringing in the ears and starting in the face of the prosecutors you are called upon to say, on your oaths, that these facts do not exist. You are called upon, in defiance of shame, of truth, of

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honour,

honour, to deny the sufferings under which you groan, and to flatter the persecution that tramples you under foot.

But the learned gentleman is further pleased to say that the traverser has charged the government with the encouragement of informers. This, gentlemen, is another small fact that you are to deny at the hazard of your souls, and upon the solemnity of your oaths. You are upon your oaths to say to the sister country, that the government of Ireland uses no such abominable instruments of destruction as informers. Let me ask you honestly, what do you feel, when in my hearing, when in the face of this audience, you are called upon to give a verdict that every man of us, and every man of you know by the testimony of your own eyes to be utterly and absolutely false? I speak not now of the public proclamation of informers with a promise of secrecy and of extravagant reward; I speak not of the fate of those horrid wretches who have been so often transferred from the table to the dock, and from the dock to the pillory; I speak of what your own eyes have seen day after day during the course of this commission from the box where you are now sitting; the number of horrid miscreants who avowed upon their oaths that they had come from the very seat of government—from the castle, where they had been worked upon by the fear of death and the hopes of compensation, to give evidence against their fellows that the mild and wholesome councils of this government

vernment, are holden over these catacombs of living death, where the wretch that is buried a man, lies till his heart has time to fester and dissolve, and is then dug up a witness.

Is this fancy, or is it fact? Have you not seen him, after his resurrection from that tomb, after having been dug out of the region of death and corruption, make his appearance upon the table, the living image of life and of death, and the supreme arbiter of both? Have you not marked when he entered, how the stormy wave of the multitude retired at his approach? Have you not marked how the human heart bowed to the supremacy of his power, in the undissembled homage of deferential horror? How his glance, like the lightning of heaven, seemed to rive the body of the accused, and mark it for the grave, while his voice warned the devoted wretch of woe and death; a death which no innocence can escape, no art elude, no force resist, no antidote prevent:—there was an antidote—a juror's oath—but even that adamant chain, that bound the integrity of man to the throne of eternal justice, is solved and melted in the breath that issues from the informer's mouth; conscience swings from her moorings, and the appalled and affrighted juror consults his own safety in the surrender of the victim:—

Et quæ sibi quisque timebat,——

Unius in miseri exitium conversa tulere.

Gentlemen, I feel I must have tired your patience, but I have been forced into this length by
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the prosecutor who has thought fit to introduce those extraordinary topics, and to bring a question of mere politics to trial under the form of a criminal prosecution. I cannot say I am surprised that this has been done, or that you should be solicited by the same inducements, and from the same motives, as if your verdict was a vote of approbation. I do not wonder that the government of Ireland should stand appalled at the state to which we are reduced. I wonder not that they should start at the public voice, and labour to stifle or contradict it. I wonder not that at this arduous crisis when the very existence of the empire is at stake, and when its strongest and most precious limb is not girt with the sword for battle, but pressed by the tourniquet for amputation; when they find the coldness of death already begun in those extremities where it never ends, that they are terrified at what they have done, and wish to say to the surviving parties of that empire, "they cannot say "that we did it." I wonder not that they should consider their conduct as no immaterial question for a court of criminal jurisdiction, and wish anxiously, as on an inquest of blood, for the kind acquittal of a friendly jury. I wonder not that they should wish to close the chasm they have opened by flinging you into the abyss. But trust me, my countrymen, you might perish in it, but you could not close it; trust me, if it is yet possible to close it, it can be done only by truth and honour; trust me, that such an effect could no more be wrought by the sacrifice of a jury,

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than by the sacrifice of Orr. As a state measure, the one would be as unwise and unavailing as the other; but while you are yet upon the brink, while you are yet visible, let me, before we part, remind you once more of your awful situation.—The law upon this subject gives you supreme dominion. Hope not for much assistance from his lordship. On such occasions perhaps the duty of the court is to be cold and neutral. I cannot but admire the dignity he has supported during this *trial*; I am grateful for his patience. But let me tell you, it is not his province to fan the sacred flame of patriotism in the jury-box; as he has borne with the little extravagancies of the law, do you bear with the little failings of the press. Let me therefore remind you, that, though the day may soon come when our ashes shall be scattered before the winds of heaven, the memory of what you do cannot die; it will carry down to your posterity your honour or your shame. In the presence and in the name of that ever-living God, I do therefore conjure you to reflect, that you have your characters, your consciences, that you have also the character, perhaps the ultimate destiny of your country in your hands. In that awful name I do conjure you to have mercy upon your country and yourselves, and so judge now, as you will hereafter be judged; and I do now submit the fate of my client, and of that country which we have yet in common, to your disposal.

Mr. Finnerty was found guilty.

SPEECH

S P E E C H
OF
JOHN PHILPOT CURRAN, Esq.
IN DEFENCE OF
MR. OLIVER BOND,
FOR
HIGH TREASON.
ON TUESDAY, JULY 24, 1798.

ABSTRACT OF THE INDICTMENT.

“**M**R. OLIVER BOND, you stand indicted, for that
“ not having the fear of God before your eyes,
“ nor the duty of your allegiance considering,
“ but being moved and seduced by the instiga-
“ tion of the devil, you did, with other false trai-
“ tors, conspire and meet together, and contriving
“ and imagining with all your strength this king-
“ dom to disturb, and to overturn by force of
“ arms, &c. the government of this kingdom, on
“ the 20th day of May, in the thirty-eighth
“ year of the reign of the present king, in the
“ parish

“ parish of St. Michael the archangel, did con-
 “ spire and meet together about the means of
 “ overturning the government; and his majesty
 “ of and from his royal state, power and go-
 “ vernment of this country to deprive and put;
 “ and that you, Oliver Bond, with other false
 “ traitors, did meet together and make resolu-
 “ tions to procure arms and ammunition for the
 “ purpose of arming men to wage war against
 “ our sovereign lord the king; and did conspire
 “ to overturn by force the lawful government
 “ of this kingdom, and to change by force the
 “ government thereof; and did assemble and
 “ meet together to raise a rebellion in this king-
 “ dom; to procure arms to aid and assist in
 “ said rebellion; and that you, Oliver Bond,
 “ did aid and cause Thomas Reynolds to be a
 “ colonel in the county of Kildare, to aid and
 “ assist in the said rebellion, and did administer
 “ unlawful oaths to said Thomas Reynolds, and
 “ to certain other persons, to be united Irish-
 “ men, for the purpose of overturning by force
 “ the government of this kingdom; and you, the
 “ said Oliver Bond, did collect sums of money
 “ to furnish arms and ammunition to the persons
 “ in said rebellion, against the duty of your
 “ allegiance, contrary to his majesty’s peace,
 “ his crown and dignity, and contrary to the
 “ form of the statute in that case made and pro-
 “ vided. And whereas a public war, both by
 “ land and sea, is, and hath been carried on by
 “ persons exercising the powers of government

“ in

“ in France, you, the said Oliver Bond, not
 “ having the fear of God before your eyes, did
 “ aid and assist the French and men of France
 “ to invade this kingdom, to overturn by force
 “ the government of this kingdom, and to com-
 “ pass and imagine the death of the king, and
 “ so forth. On this indictment you, Oliver Bond,
 “ have been this day arraigned, and have pleaded
 “ not guilty, and for trial have put yourself on
 “ God and your country.”

MR. CURRAN.

MY LORDS, AND GENTLEMEN OF THE JURY, I am
 counsel for the prisoner at the bar—it is my *duty*
 to lay his case before you. It is a *duty* that at
 any time would be a *painful* one to me, but at pre-
 sent peculiarly so; having, in the course of this
 long trial, experienced great fatigue both of mind
 and of body, a fatigue I have felt in common
 with the learned judges who preside on the
 bench, and with my brethren of the bar: I feel
 as an advocate for my client the duty of the awful
 obligation that has devolved upon me.—I do not
 mean, gentlemen of the jury, to dilate on my
 own personal fatigues, for I am not in the habit
 of considering my personal ill state of health, or
 the anxiety of my mind, in discharging my duty
 to clients in such awful situations as in the pre-
 sent momentous crisis; I have not been in the
 habit,

habit, gentlemen of the jury, to expatiate to you on personal ill-health; in addressing myself to jurors on any common subject, I have not been in the habit of addressing myself to the interposition of the court, or to the good-natured consideration of the jury, on behalf of my client. I have mentioned indeed my own enfeebled worn out body, and my worn out state of mind, not out of any paltry respect to myself, nor to draw your attention to myself, but to induce you to reflect upon this; that in the weakness of the advocate, the case of my client, the prisoner at the bar, is not implicated; for his case is so strong in support of his *innocence*, that it is not to be weakened by the imbecility, or the fatigue of the advocate.

Gentlemen of the jury, I lament that this case has not been brought forward in a simple, and in the usual way, without any extraneous matter being introduced into it, as I think in justice, and as I think in humanity, it ought to have been. I lament that any little artifices should be employed upon so great and solemn a case as this, more especially in desperate times, than upon more ordinary occasions; and some allegations of criminality have been introduced, as to persons and things, that ought not in my opinion to have been adverted to in a case like this. What, for instance, has this case to do with the motion made by lord Moira in the house of lords in Ireland in February last, or the accidental conversations with

with lord Edward Fitz Gerald? If you have a feeling for virtue, I trust that lord Moira will be revered as a character that adds a dignity to the peerage. What made that noble character forego his great fortune, quit his extensive demesnes, and the tranquillity of the philosophic mind, but the great and glorious endeavour to do service to his country? I must repeat, he is an honour to the Irish peerage. Let me ask, why was the name of lord Moira, or lord Wycombe (who happened to dine at sir Duke Giffard's) introduced into this trial? what has that motion which lord Moira introduced in the house of lords to do with the trial of Mr. Oliver Bond on a charge of high treason? Gentlemen of the jury, you have been addressed as against a person by whom a fire has been supposed to have been kindled, and this too at the period of its being extinguished. (Some ignorant persons in the crowded gallery having created some noise in the court prevented the learned advocate a few minutes from proceeding—The court said they would punish any person who dared to interrupt the counsel for the prisoner, and said they hoped Mr. Curran would be able to proceed in stating the prisoner's case.) Mr. Curran, in continuing—I have very little hope to be able to discharge my *duty*, but I impute the interruption to mere accident; I cannot suppose it was levelled against me, but I am afraid it was excited by prejudice,—(The court remarked, they would maintain the peace and decorum of the court, and they would guard the

prisoner

prisoner from any prejudice. "Mr. Curran, you will state the facts of the prisoner's case to the jury, and shall not be interrupted.")—Mr. Curran, in continuation. Gentlemen of the jury, I was cautioning you against being prejudiced against my unfortunate client; I fear there is much reason why I should caution you against the influence of any prejudice against the prisoner at the bar. You are to decide on your verdict, by the evidence given and the evidence that on the part of the prisoner will be laid before you, and you will see that the evidence does not support the prosecution. You will banish any prejudices, and let your verdict be the result of cool and deliberate investigation, and not given in the heat of the season when mens' minds may be inflamed by the circumstances of the times. I shall lay before you the case of my client, to controvert the evidence given on the part of the prosecution, and shall offer to your consideration some observations in point of law, under the judicial controul of the court as to matter of law. I will strip my client's case from the extraneous matter that hath been attempted to be fastened on it. I feel, gentlemen, the more warm, when I speak to you in favour of my client's innocence, and to bring his innocence home to your judgments. I know the honesty and rectitude of your characters, and I know my client has nothing to fear from your understanding. It is my duty to state to you, we have evidence to prove to you, that the witness on the part of the prosecutor

secutor is undeserving of credit, and it is my duty to apprise you, that it is your duty to examine into the moral character of the witness that has been produced; and it is of the utmost concern you should do this, as your verdict is to decide on the life or death, the fame or dishonour of the prisoner at the bar. With respect to prosecutions brought forward by the state, I have ever been of opinion that the decision is to be by the jury, and that as to any matter of law the jury do derive information from the court; for jurors have by the constitution a fixed and permanent power to decide on matter of fact, and the letter of the law the sovereign leaves to be expounded by the mouth of the king's judges. Some censure upon some former occasions hath fallen on former judges, from a breach of this doctrine. Upon a former occasion I differed in my opinion from the learned judge who then presided, as to what I conceived to be the law, as to what is to be construed in the law of high treason, as to compassing or imagining the death of the king; I am not ashamed of the opinion in a point of law I entertained, I never shall be ashamed of it. I am extremely sorry I should differ from the bench in opinion on a point of law, but judges have had different opinions upon the same subject: where an overt-act is laid of compassing and imagining the death of the king it does not mean in construction of law the natural dissolution of the king, but where there was not the fact acted upon, but confined merely to the *intention* a man had;

had; the proof of such *intention* must, according to lord Coke and sir M. Foster, be proved by *two witnesses* in England; the statute of Edward III. provides against the event of the death of the king by any person levying war, whereby his life might become endangered. The proof of such overt-act must in England be substantiated by two witnesses; how it comes not to be settled and required in Ireland, is not accounted for. Before the statute of Edward III. the law relative to high treason was undefined, which tended to oppress and harrass the people, for, by the common law of England, it was formerly a matter of doubt, whether it was necessary to have two witnesses to prove an overt-act of high treason. Lord Coke says, that in England there must be two witnesses to prove an overt-act; it seems he was afterwards of a contrary opinion; but in the reign of William III. a statute passed, and by that statute it appears there must be *two witnesses*, but when that statute came to be enacted here, the clause relative to there being *two witnesses* to an overt-act of high treason was not made the law in Ireland, but why it was not required in Ireland is not explained. By the English act of William III. in England, the overt-act must be proved by two witnesses in England but it does not say in *Ireland*: but as the common law of England and the common law of Ireland are the same, the consciences of an Irish jury ought to be fully satisfied by the *testimony of two witnesses* to an overt-act; but, on this point, however, some of the
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Irish judges are of opinion, that *two witnesses* are not in *Ireland* required to substantiate an overt-act, therefore their opinion must be acquiesced in. Let me suppose that Confucius, Plato, Solon, or Tully, or any other great philosopher, was of opinion, on any particular point, as suppose for instance, that on the statute of William III. in order to have a just and equal trial there must be two witnesses to prove an overt act; Blackstone and Montesquieu are of opinion we should have the equal protection to our liberties; why then should not a jury in Ireland require the same evidence, *i. e.* two witnesses here, as well as in England? The learned counsel referred to the statute of Edward III.—act of king William III. on high treason, Blackstone's commentaries, Montesquieu's spirit of laws, Coke on Littleton, and sir Michael Foster's pleas of the crown.

Gentlemen of the jury, let me state to you in the clearest point of view the defence of the prisoner at the bar, and see what has been the nature of the evidence adduced—the prisoner at the bar is accused—of compassing or imagining the death of the king, and of adhering to the king's enemies—the evidence against him is *parole and written* evidence. Now, gentlemen of the jury, I will venture to observe to you, that as to the *written*, evidence, if suffered to go before you by the court, it is only as evidence at large; but as to the credibility of it, that is for you to decide upon.—Mr. Reynolds, in his parole testimony, has sworn,
that

that he was made a united Irishman by the prisoner at the bar.—Mr. Reynolds says, he was sworn to what he considered to be the *objects* of that society—he stated them to you; but whether true or false is for you to determine, by the credit you may give to his testimony. This is the third time Mr. Reynolds has appeared in a court of justice, to prosecute the prisoners. He says, the *objects* of the united Irishmen are to overturn the present government, and to establish a republican form of government in its stead, and to comfort and abet the French, on their invading this kingdom, should such an event take place.—You have heard his testimony, let me ask, do you think him incapable of being a villain? do you think him to be a villain? you observed with what kind of pride he gave his testimony—do you believe his evidence by the solemn oath that you have taken? or do you believe it was a blasted perjury? can you give credit to any man of a blasted character?—It has been the misfortune of many former jurors to have given their verdict founded upon the evidence of a perjured witness, and on their death-bed they repented of their credulity, in convicting a man upon false testimony; the history of former ages is replete with such conduct, as may be seen in the state trials, in the case of lord Kimbolton and Titus Oates—the then jurors convicted that nobleman, but some time after his death, the jurors discovered they had given implicit credit to a witness unworthy of it; and the lawyers of those times

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might

might have said "I thank God they have done the deed."—Does not the history of human infirmity give many instances of this kind? Gentlemen, let me bring you more immediately to the case before you; had we no evidence against Reynolds but his own solitary evidence; from the whole of his evidence, you cannot establish the guilt of the prisoner at the bar; take the whole of his evidence into your consideration, it may appear he is unworthy of credit. He told you he got information from M'Cann on the Sunday morning, that the meeting was to be on Monday morning at ten o'clock.—Reynolds goes immediately to Mr. Cope and gives him that information.—On Sunday afternoon he goes to lord Edward FitzGerald, and shews him the orders issued by captain Saurin to the lawyers' corps: then, said lord Edward, I fear government intend to arrest me, I will go to France, and hasten them to invade this country.—Government has no information of the meeting of the provincial delegates at Bond's; no, no, says Reynolds, that is impossible.—Reynolds wrote to Bond that he could not attend the meeting, as his wife was ill; Reynolds did not go to the meeting.—Bond was arrested on the Monday morning; on Monday evening at eight at night Reynolds goes to lord Edward in Aungier-street, meets him, and goes again to him the next night, and lord Edward conversed with Reynolds about his (lord Edward,) going to France.—Reynolds then went to Kildare, he gave the most solemn assurance to
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the delegates at a meeting there, that he never gave information of the meeting at Bond's:—now see how many oaths Reynolds has taken; he admits he took two of the oaths of the obligations to the society of united Irishmen. He told you lord Edward advised him to accept of being a colonel of Kildare united Irishmen's army, and yet he says, he afterwards went to Bond's, and Bond advised Reynolds to be a colonel. It appeared in evidence that Reynolds was treasurer; he took two more oaths, one as colonel, and one as treasurer, and he took the oath of allegiance also, and he took oath to the truth of his testimony, at the two former trials and at this; on which do you give him credit?—Gentlemen, in order to narrow the question under your consideration, I may observe that what Reynolds said, relative to lord Edward's conversation, is totally out of this case, it can have no weight at all on the trial of Mr. Bond for high treason, in the finding of your verdict.—How, or in what manner, is the prisoner at the bar to be affected by it? I submit to your lordship that the declaration of lord Edward to Reynolds, when Bond was not present, is not attachable to the prisoner.—Mr. Reynolds has given you a long account of a conversation he had with Mr. Cope, relative to the proceedings of the society of united Irishmen, and Mr. Cope said, if such a man could be found, as described by Mr. Reynolds, who would come forward and give information, he would deserve the epithet of saviour of his country:—thus by Rey-

nolds's evidence, it would seem that Mr. Cope was the little poney of repentance to drive away the gigantic crimes of the *colossus Reynolds*:—but remember, said Mr. Reynolds, though I give information I won't sacrifice my morality; I won't come forward to prosecute any united Irishman. No, no; like a bashful girl, higgling about the price of her virginity, I am determined, says Reynolds, to preserve my character—I will give the communications, but do not think I will descend to be an informer—I will acquaint you of every thing against the united Irishmen, but I must preserve my credit—I tell you the design of the united Irishmen is to overturn the constitution—I will lead you to the threshold of discovery, but I won't name any price for reward—pray don't mention it at all. Says Mr. Cope; a man would deserve a thousand, or fifteen hundred a year and a seat in parliament, or any thing, if he could give the information you mention—No such thing is required, no such thing, says Reynolds—you mistake me; I will have nothing in the world but merely a compensation for losses—do you think I would take a bribe? I ask only of you to give me leave to draw a little bit of a note on you for five hundred guineas, only by way of indemnity, that is all, merely for indemnity of losses I have sustained, or am liable to sustain. Gentlemen of the jury, don't you see the vast distinction between a bribe and gratification? What says Foigard? consider my conscience, do you think I would take a bribe? it would

would grieve my conscience if I was to take a bribe—to be a member of parliament and declare for the ayes or the noes—I will accept of no bribe—I will only take a little indemnity for claret that may be spilt; for a little furniture that may be destroyed; for a little wear and tear, for boots and for shoes, for plate destroyed; for defraying the expences of some pleasurable jaunts, when out of this country; for if I become a public informer against the united Irishmen, and should continue here for some time, I may chance at some time to be killed by some of them—for I have sworn to be true to them, and I also took the oath of allegiance to be true to my sovereign—I have taken all sorts of oath; if I frequent the company of those who are loyal to the king, they will despise the man who broke his oath of allegiance, and between the loyalist and the united Irishmen, I may chance to be killed—As I am in the habit of living in the world, says Mr. Reynolds to Mr. Cope, you will give me leave to draw a bit of paper on you, only for three hundred guineas at present; it will operate like a bandage to a sore leg, though it won't cure the sore, or the rottenness of the bone, it may hide it from the public view.—I will, says Mr. Reynolds, newly be baptised for a draft of three hundred guineas, and become a public informer, and for a further bit of paper only, for another two hundred guineas, yet I trust you will excuse me, I will not positively take
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any more.—He might, I imagine, be compared to a bashful girl, and say, What, shall the brutal arms of man attack a country maid, and she not stipulate for full wages ; when her gown shortens, and her apron bursts asunder, and she shrinks at the view of public prostitution ! perhaps he practised upon her virtue, when she thought he was gaining the affections of that innocent dupe in private.—Do you think that Reynolds would touch a bribe, and become an informer ?—no, no, he said he would be no informer—but did he not consent to do a little business in private—and did he not get money for it ? Perhaps he said, I thought to be no villain—I would not have the world think me a villain, yet as I can confide in myself, why should I mind what the world says of me, though it should call me villain ? but is it not a real fact ?—Even though I should become the talk of all the porter-houses, though I should become the talk of all the tea-tables, yet perjury is not brought home to me.—No ; no human being has knowledge of what is rankling within ? Has it not been said, I was an honest man, to come upon the public board as a public informer ? they did call me an honest man, and a worthy, a respectable informer, and thus my character is at bay.—The world indeed heard of the progress of these crimes, and that I was unfortunately an united Irishman.—He told you there was a *provincial* meeting of delegates, but he has not ventured to tell you where the *provincial committee*

committee met;—he has simply said, there was a provincial committee.—It was a question of great concern; I have doubts about it.—It is not stated to me what these important consultations were about.—From M'Cann he heard that a *baronial* meeting was to be at Bond's on the 12th of March, and that there was *material business to transact*, and desired Reynolds to attend—that is all that Reynold's heard from M'Cann, and M'Cann is now no more, and this part of the case is in doubt and obscurity.—For my part I am not satisfied that any thing criminal did pass at the meeting at Bond's on the 12th of March—no man can say so—on the evidence produced, they do not say that,—they only *suppose* there was.—Was the jury to judge of their own present view, I do not think they would come justly, with their verdict of condemnation.—The question is not, whether there was any meeting at Bond's, but what was the object of that meeting?—Bond was in the ware-house in the custody of the guard, afterwards he came up to the room with Mr. Swan.—At Bond's there was a meeting of the united Irishmen, and though Bond was not taken in that room, yet Bond's charge is mixed with the guilt of that meeting.—The overt-act in the indictment is, of conspiring to levy war, &c. It is material to observe, in this part of the case, it was a *bare conspiracy to levy war*; it is not, as I conceive, high treason; the *bare intention*

intention does not amount to compassing or imagining the death of the king—it is not *adhering to the king's enemies*; under certain circumstances, this is not high treason, of compassing the death of the king.—This is the *great hinge, as I apprehend, in this case*. Gentlemen, what was the evidence given? that there was a meeting, for a *dangerous purpose*—M'Cann said, there was to be a meeting of the delegates at Bond's on the 12th of March;—he did not tell Reynolds *the purport of that meeting*—therefore, gentlemen, my objection is, was that a *provincial meeting*? it rests on that evidence of the informer, and no other witness. It was M'Cann told Reynolds, you must be at the convention on the 12th of March, to compass the death of the king, and overturn the government;—but Bond did not tell him any such thing—Bond *only said*, M'Cann *was able to give information* of what was going forward at *that meeting*; but Bond knew nothing about it—though admitting a meeting was held in Bond's house for a guilty purpose, yet Bond might be perfectly *innocent*; he was not in the room till Mr. Swan came—there was to be a watch-word, *is M'Cann here?* from thence it would seem it was a meeting at M'Cann's suggestion—Mr. Bond probably did not know *the motive*, why he gave the use of the room; for there was not one word of conversation between Bond and Reynolds.—Reynolds says, M'Cann told him the *watch-word*, M'Cann did

did not get the watch-word from Bond, the prisoner at the bar,—the watch-word was, is M'Cann here ; it was for the admission of no person, that M'Cann did not know ; it had no relation to Mr. Bond. Has this no weight with you, gentlemen of the jury? do you feel anxious to investigate the truth? If you believe Reynolds, the meeting was for the worst purpose, but was it with the knowledge of Bond? for Bond said to Reynolds, *I can give you no information, go to M'Cann, he can inform you*—Upon the evidence therefore of Reynolds rests this man's life, for the written evidence found in the room cannot in my apprehension affect Bond, he was *not in the room* ; if you, as no doubt you will, be of opinion, Bond was *not in the room, where the papers were found*. —There is not any evidence of the conversation before Mr. Swan came, and he found on the table a paper written on and the ink not dry. "*I A B was duly elected.*"—it was *not found upon the prisoner at the bar*:—the papers found might affect the *persons in the room*—but at the time of the seizure of the papers Bond was in the warehouse in custody of sergeant Dugan, and was not brought up stairs untill *after* the arrest. The papers found upon Bond might be read in evidence against him, but I conceive not those found in the room. What was the intention of mentioning the letter from Reynolds, found on the prisoner at the bar? It was stated, but not read in evidence, merely to apologize for Reynolds's
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not attending the meeting on the 12th of March : Reynolds says he got it again, and burnt it.— Reynolds did not pretend to state to you, he knew from Bond, what the object of the meeting was ; —and it is material to observe, that Bond's name was not found entered in the *list of the persons* who made *returns*, and attended the meeting :— Bond has been resident in this city twenty years ; in your walks of life, gentlemen of the jury, you never heard any thing to his prejudice, before this charge.—I know my duty to my client, and must tell you, If you have had prejudices, I know you will discard them ; I am not paying you any compliment ; I have spoken under the feelings of an Irishman, during the course of these trials ; I have endeavoured to speak to your understandings ; I have not ventured to entreat you on behalf of my client, because I am sure you will give your justice and your merits free operation, in your minds and consciences at this trial. I am sure you will try the cause fairly, and admit every circumstance into your reflections ; in a case between the crown and the prisoner, I have not ventured to address you on the public feelings, at this important crisis ; you will preserve the subject for the sake of the law, and preserve the law for the sake of the crown. You are to decide by your sober and deliberate understandings, and hold the balances equal between the crown and the subject, for you are called upon to pronounce your sentence of condemnation or acquittal of
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the prisoner at the bar.—If you should be mistaken in your verdict, it cannot shake the safety of the state; you are called upon, with the less anxiety, because which ever way your verdict may be, you are not to be told, remember the safety of your king, or your own safety, you are to have in recollection your solemn oath, to decide according to the evidence, and give such a verdict, as may also be satisfactory to your consciences, at the last moment of your existence. The court will tell you, it is your province to decide on matter of fact, and as to opinion on matter of law, the court will explain that to you. Your verdict can never die. As to my opinions of the law, whatever they may be, I shall never have an opportunity of uttering them to you again: your verdict will stamp infamy on the prisoner, or support the throne of the law; I need not remind you that the present moment is awful.—My friends, if you suffer your consciences to be influenced, to be degraded, into opinions of the consequences of your verdict; you are bound to decide by the evidences, the glorious privilege of trial by jury!!! If martial law must cut the throat of brotherly affection, the necessity of it will cease, for verdicts of honest jurors will restore your country to peace and tranquillity; and the liberties of your country will by that means be secured. The supreme government of a nation must be protected and supported whatever the form of that government may be:

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let me however ask, is there no species of law to be resorted to but terror? let me observe to you, that the moral law is destroyed, when it is stained with the effusion of blood, and it is much to be regretted, when the terrors of the criminal law are obliged to be resorted to, to enforce obedience to the common law of the land, by the people, for the sword may cover the land with millions of deluded men.—Is it become necessary to hurl destruction round the land, till it shivers into a thousand particles, to the destruction of all moral law, and all moral obligations? —By the common law of the land, no subject is to be deprived of life, but by a trial of his fellow subjects; but in times when rebellion prevails in any country, many suffer without the semblance of a trial by their equals. From the earliest period of history down to the present time, there have been seen in some parts of the earth instances where jurors have done little more than record the opinions given by them to the then judges; but that is the last scene of departing liberty. I have read that, in the period of the rebellion, in the last century in England, jurors on trials, by the common law of the land, have been swayed in their determination by the unsupported evidence of an informer; and after-times have proved their verdict was ill founded, and the innocence of the convicted persons afterwards appeared; trials on charges of high treason are of the utmost moment to the country, not merely in

in respect of any individual, but of the necessity there is that the public should know the blessings of trial by jury, and that the jurors should solely determine on their verdict by the evidences, and maturely weigh the *credit of the witnesses* against any prisoner.—Several of these trials of late date some of you have been present at, and you know that the object of the court and the jurors is to investigate the truth from the evidences produced; and the jurors are sworn to decide, and to bring in a true verdict according to the evidences. One witness has been examined on this trial, who I think does not deserve credit, but it is you who are the sole judges as to whom you will give credit to; but though you know this witness has given evidence on two former trials, and though the then jury did give credit to his testimony, yet you are not to determine on your verdict on the faith or precedent of any former jurors, but you are to be solely guided by your own consciences; and you will observe we have had here two more witnesses to impeach the character of Mr. Reynolds, that were not produced on the former trials; and you will no doubt, throw out of your minds whatever did not come this day before you in evidence, on the part of the prosecution; and which will come before you on part of the prisoner's defence. You will find your verdict flowing from conscious integrity, and from the feelings of honourable minds; notwithstanding the evidence
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of the witness, Mr. Reynolds, who has been examined upon the table, and whose testimony I need not repeat to you; perhaps you may be inclined to think, he is a perjured witness, perhaps you will not believe the story he has told against the prisoner at the bar, and of his own turpitude: you will do well to consider it was through a perjured witness, that a Russel and a Sydney were convicted in the reign of James II.—If juries are not circumspect to determine *only* by the evidence adduced before them, and not from any extraneous matter, nor from the slightest breath of prejudice, then what will become of our boasted trial by jury; then what will become of our boasted constitution of Ireland? In former times when jurors decided contrary to evidence, it created great effusion of blood. Let me ask, will you, gentlemen, give a verdict through infirmity of body, or through misrepresentations, or through ignorance? you by your verdict, will give an answer to this.—Gentlemen of the jury, you will weigh in your minds, that many inhuman executions did take place in former times; though the then accused underwent the solemnity of a trial, the verdicts of those jurors are not in a state of annihilation, for they remain on the page of history, as a beacon to future jurors; the judges before *whom* the then accused were tried, have long since paid the debt of nature; they cannot now be called to account, why they shrunk from their duty—I call upon you, gentleman of the jury, to be firm in the exercise of the solemn

solemn duty you are now engaged in; should you be of opinion to bring in a verdict of condemnation against my unfortunate client, for myself I ought to care nothing, what impressions may actuate your minds to find such a verdict; it little regardeth me, but it much regardeth you, to consider what kind of men you condemn to die; and, before you write their bloody sentence, consider maturely whether the charge against the prisoner is fully proved. If you should on the evidences you have heard condemn the prisoner to death, and afterwards repent it, I shall not live among you to trace any proof of your future repentance.—I said I rose to tell you what evidences we had to produce on behalf of my client, the prisoner at the bar; we shall lay evidence before you, from which you can infer, that the witness produced this day was a perjured man; we have only to shew to you, as honest men, that the witness is not deserving of credit on his oath; we have nothing more to offer on behalf of my client, the prisoner at the bar.—It is your province to deliberate in your consciences on what evidence you have heard, and whether you will believe the witness you have heard, on his oath, or not.—Let me ask, will you, upon the evidence you have heard, take away the life of the prisoner at the bar, separate him from his wife and from his little children for ever? I told you I was to state to you the evidences which we had to bring forward on behalf of my unfortunate client; I tell you it is to discredit the testimony of Mr. Reynolds;

Reynolds; when you have heard our evidences to this point, I cannot suppose you will give your verdict to doom to death the unhappy and unfortunate prisoner at the bar, and entail infamy on his posterity. We will also produce respectable witnesses to the hitherto unimpeached character of the prisoner at the bar, and prove that he was a man of fair honest character; you, gentlemen of the jury, have yourselves known him a number of years in this city; let me ask you, do you not know that the prisoner at the bar has always borne the character of a man of integrity, and of honest fame? and, gentlemen of the jury, I call upon you to answer my question by your verdict.—I feel myself imprest with the idea in my breast, that you will give your verdict of acquittal of the prisoner at the bar; and that by your verdict you will declare on your oaths, that you do not believe one syllable that Mr. Reynolds has told you. Let me entreat you to put in one scale, the base, the attainted, the unfounded, the perjured witness; and in the opposite scale, let me advise you to put the testimony of the respectable witnesses produced against Mr. Reynolds, and the witnesses on the prisoner's hitherto unimpeached character; and you will hold the balances with justice, tempered with mercy, as your consciences in future will approve.—Let me depart from the scene of beholding human misery, should the life of my client by your verdict be forfeited; should he live by your verdict of acquittal, he would rank
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as the kindest father, and protector of his little children, as the best of husbands, and of friends, and ever maintain that irreproachable character, he has hitherto sustained in private life.—Should our witnesses not exculpate the prisoner from the crimes charged on him, to the extent as charged in the indictment, I pray to God to give you the judgment and understanding to acquit him. Do not imagine I have made use of any arguments to mislead your consciences, or to distress your feelings: no—but if you conceive a doubt in your minds, that the prisoner is innocent of the crime of high treason, I pray to God to give you firmness of mind to acquit him. I now leave you, gentlemen of the jury, to the free exercise of your own judgments in the verdict you may give.—I have not, by way of supplication, addressed you in argument; I do not wish to distress your feelings by supplications; it would be most unbefitting to your candour and understanding;—you are bound by your oaths to find a true verdict according to the evidence; and you do not deserve the station of jurors, in which the constitution has placed you, if you do not discharge the trust the constitution has vested in you, to give your verdict freely and indifferently, according to your consciences.

Mr. Bond was found guilty.

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

IN DEFENCE OF

LADY PAMELA FITZGERALD

AND

HER INFANT CHILDREN,

AT THE

BAR OF THE HOUSE OF COMMONS IN IRELAND.

LORD EDWARD FITZGERALD having died in prison before trial, of the wound he received in resisting the person who apprehended him, a bill was brought into parliament to attain him after his death. Mr. Curran was heard at the bar of the house of commons against the bill, as counsel for the widow and infant children of that nobleman, (the eldest of whom was only four years old,) on which occasion Mr. Curran delivered the following speech.

Mr.

Mr. Curran said, he rose in support of a petition presented on behalf of lord Henry FitzGerald, brother of the deceased lord Edward FitzGerald; of Pamela, his widow; Edward, his only son and heir, an infant of the age of four years; Pamela, his eldest daughter, of the age of two years; and Lucy, his youngest child, of the age of three months, against the bill of attainder then before the committee. The bill of attainder he said, had formed the division of the subject into two parts. It asserted the fact of the late lord Edward's treason, and secondly, it purported to attain him, and to vest his property in the crown. He would follow the same order. As to the first bill, he could not but remark upon the strange looseness of the allegation: the bill stated that he had, during his life, and since the first of November last, committed several acts of high treason; without stating what, or when, or where, or with whom: it then affected to state the different species of treason of which he had been guilty, namely, conspiring to levy war, and endeavouring to persuade the enemies of the king to invade the country; the latter allegation was not attempted to be proved! the conspiring, without actually levying war, was clearly no high treason, and had been repeatedly so determined. Upon this previous and important question, namely, the guilt of lord Edward, (and without the full proof of which no punishment can be just) he had been asked by the com-

mittee, if he had any defence to go into? he was confounded by a question which he could not answer; but upon a very little reflection, he saw in that very confusion the most conclusive proof of the injustice of the bill. For what, he said, can be more flagrantly unjust, than to enquire into a fact, of the truth or falsehood of which, no human being can have knowledge, save the informer who comes forward to assert it. Sir, said he, I now answer the question. I have no defensive evidence! I have no case! it is impossible I should,—I have often of late gone to the dungeon of the captive; but never have I gone to the grave of the dead to receive instructions for his defence—nor in truth have I ever before been at the trial of a dead man? I offer therefore no evidence upon this enquiry; against the *perilous example* of which, I do not protest on behalf of the *public*, and against the *cruelty* and *injustice* of which I do protest in the name of the *dead father*, whose *memory* is SOUGHT to be *dishonoured*, and of his *infant orphans*, whose bread is SOUGHT to be taken away. Some observations, and but a few, upon the assertions of Reynolds, I will make. (Mr. Curran then observed upon the credit of Reynolds by his own confession.) I do verily believe him in that instance, even though I have heard him assert it upon his oath, by his own confession, an informer and a bribed informer;—a man whom even respectable witnesses had sworn in a court
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of justice upon their oaths not to be credible on his oath;—a man upon whose single testimony no jury ever did, nor ever ought to pronounce a verdict of guilty;—a kind of man to whom the law resorts with *abhorrence* and from necessity, in order to set the criminal against the crime, but who is made use of by the law upon the same reason that the *most noxious poisons* are resorted to in medicine. If such the man, look for a moment at his story; he confines himself to mere conversation only, with a dead man. He ventures not to introduce any third person, living or even dead! he ventures to state no act whatever done, he wishes indeed to asperse the conduct of lady Edward FitzGerald, but he well knew, that, even were she in the country, she could not be adduced as a witness to disprove him.

See therefore if there be any one assertion to which credit can be given, except this, that he has sworn, and forsworn, that he is a traitor, that he has received five hundred guineas to be an informer, and that his general reputation is, to be utterly *unworthy of credit*.

As to the papers, it was sufficient to say, that no one of them, nor even all of them, were even asserted to contain any positive proof against lord Edward; that the utmost that could be deduced from them was nothing more than doubt or conjecture, which, had lord Edward been living,
might

might have been easily explained, to explain which was now impossible, and upon which to found a sentence of guilt would be contrary to every rule of justice or humanity.

He would therefore pass to the second question. Was this bill of attainder warranted by the principles of reason? the principles of forfeiture in the law of treason? or the usage of parliament in bills of attainder? The subject was of necessity very long, it had nothing to attract attention, but much to repel it. But he trusted that the anxiety of the committee for justice, notwithstanding any dulness either in the subject or in the speaker, would secure to him their attention. Mr Curran then went into a minute detail of the principles of the law of forfeiture for high treason. The laws of the Persians and Macedonians, extended the punishment of traitor to the extinction of all his kindred. The law subjected the property and life of every man to the most complicated despotism, because the loyalty of every individual of his kindred was as much a matter of wild caprice, as the will of the most arbitrary despot could be.

This principle was never adopted in any period of our law: at the earliest times of the Saxons, the law of treason acted directly only on the person of the criminal, it took away from him what he actually had to forfeit—his life and property. But as to his children, the law disclaimed to affect them

them directly; they suffered, but they suffered by a necessary consequence of their father's punishment, which the law could not prevent and never directly intended. It took away the inheritance, because the criminal, at the time of taking it away, had absolute dominion over it, and might himself have conveyed it away from his family. This he said, was proved by the instances of additional fees, at the common law, and estates tail since the statute *de Donis*. In the former case, the tenant did not forfeit, until he had acquired an absolute dominion over the estate by the performance of the condition. Neither in the latter case was the estate tail made forfeitable, until the tenant in tail had become enabled in two ways to obtain the absolute dominion, by a common recovery or by a fine. Until then the issue in tail, though not only the children of the tenant, but taking from him his estate by descent, could not be disinherited by his crime. Here is a decisive proof, that even the early law of treason never intended to extend the punishment of the traitor to his children as such; but even this direct punishment upon the traitor himself was to take effect only upon a condition suggested by the unalterable rules of natural justice, namely, a judgment founded upon conviction, against which he might have made his defence, or upon an outlawry, where he refused to abide his trial. In that case he was punished because during his life the fact was triable, because during his life the punishment could act directly upon his person; because

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during his life the estate was his to convey, and therefore his to forfeit.

But if he died without attainder, a fair trial was impossible, because a fair defence was impossible; a direct punishment upon his person was impossible, because he could not feel it; and a confiscation of his estate was equally impossible, because it was then no longer his, but was vested in his heir, to whom it belonged by a title as good as that by which it had ever belonged to him in his life time, namely, the known law of the country.

As to a posthumous forfeiture of lands, that appears to have been attempted by inquest after death. But so early as the eighth of Edward the third the legality of such presentments was disallowed by the judges. And there is no lawyer at this day who can venture to deny, that since the twenty-fifth and thirty-fourth of Edward the third no estate of inheritance can regularly be forfeited save by attainder in the life of the party, therefore the law of the country being, that unless the descent was interrupted by an actual attainder in the life time of the criminal, it became vested in the heir. The moment it did descend, the heir became seised by a title the most favoured in law. He might perhaps have been considered as a purchaser for the most valuable consideration, his mother's marriage, of which he was the issue. Why then was posthumous attainder excluded from

from the protective law of treason? Why has it never since been enacted by a prospective law? clearly for this reason! that in its own nature it is inhuman, impolitic, and unjust.

But it is said, this may be done by a bill of attainder; that the parliament is omnipotent and therefore may do it; and that it is a proceeding familiar to our constitution. As to the first, it could not be denied that the parliament was in the power of the country; but an argument from the existence of a power to the exercise of it in any particular instance, is ridiculous and absurd. From such an argument it would follow, that it must do whatever it is able to do; and that it must be stripped of the best of all power, the power of abstaining from what is wrong.

Mr. Curran then endeavoured to shew that such a bill ought not to pass: first, because every argument against the justice or the policy of a prospective, was tenfold strong against a retrospective law. Because every *ex post facto* law was in itself an exercise of despotic power; when it altered the law of property it was peculiarly dangerous; when it punished the innocent for the guilty it was peculiarly unjust: when it affected to do that which the criminal, as it then stood, could not do, it acted peculiarly against the spirit of the constitution: which was to contract and restrain penal law by the strictest construction, and not to add to it by vindictive innovation.

novation. But, he said, he was warranted to go much farther upon the authority of the British legislature itself, and to say, that the principle of forfeiture, even in the prospective law, was altogether repugnant to the spirit of the British constitution.

The statutes of Anne and of George the second have declared, that after the death of the Pretender and of his sons, no such forfeiture should or ought to exist. In favour of that high authority, every philosophical and theoretic writer, baron Montesquieu, the marquis Beccaria, and many others might be cited. Against it, no one writer of credit or character, that had come to his hands. Of the late Mr. York he did not mean to speak with disrespect; he was certainly a man of learning and genius; but it must be observed, he wrote for a party and for a purpose; he wrote against the repeal of the law of forfeiture more than for its principle; of that principle he expressly declines entering into a direct defence. But for the extending of that principle farther than it is already law, the slightest insinuation cannot be found in his treatise.

But, said Mr. Curran, it is asserted to be the usage of the constitution in both countries. Of bills of attainder, he said, the instances were certainly many, and most numerous in the worst times, and rising above each other in violence and injustice. The most tolerable of them was that
which

which attainted the man who fled from justice, which gave him a day to appear, had he chosen to do so, and operated as a legislative outlawry. That kind of act had been passed, though but rarely, within the present century. There have been many acts of attainder when the party was willing but not permitted to appear and take his trial. In these two kinds of bills of attainder, however, it is to be observed, that they do not any violence to the common law, by the declaring of a new crime or a new punishment, but only by creating a new jurisdiction, and a new order of proceeding. Of the second kind that has been mentioned, many instances are to be found in the violent reigns of the Plantagenets and the Tudors, and many of them revised by the wisdom of cooler and juster times. Of such unhappy monuments of human frailty, lord Coke said, ‘*auferat oblivio, si non silentium tegat.*’

I beg leave, said Mr. Curran, to differ in that from the learned judge: I say, let the record upon which they are written be indelible and immortal: I say, let the memory that preserves them have a thousand tongues to tell them; and when justice, even late and slow, shall have robbed their fellow principle of life, let them be interred in a monument of negative instruction to posterity for ever.

A third kind of bill of attainder might be
found,

found, which for the first time declared the law, and attainted the criminal upon it; such was the attainder of Strafford. A fourth, which did not change the law as to the crime, but as to the evidence upon which it was to be proved; such was the attainder of sir John Fenwick. Of these two last species of attainder, no lawyer has ever spoken with respect; they were the cruel effect of the rancour and injustice of party spirit, nor could any thing be said in their excuse, except that they were made for the direct punishment of the actual criminals, and whilst they were yet living. The only other attainder that remained possible to be added to this catalogue, was that of a bill like the present, which affects to try after the party's death, when trial is impossible; to punish guilt when punishment is impossible; to inflict punishment where crime is not even pretended.

To change the settled law of property; to confiscate the widow's pittance! to plunder the orphan's cradle! and to violate the religion of the dead man's grave! For this too there was a precedent; but for the honour of humanity let it be remembered, that an *hundred and forty years* had elapsed in which that precedent had not been thought worthy of imitation in Great Britain:—he meant, he said, the attainder of the regicides; upon the restoration four of them were included in that bill of attainder, which was passed after their death.

Mr.

Mr. Curran then adverted pretty much at large upon the circumstances of that period. A king restored, and by his nature disposed to mercy; a ministry of uncommon wisdom, feeling that the salvation of the state could be secured only by mildness and conciliation; a bigoted, irritated, and interested faction in parliament; the public mind in the highest state of division and agitation. For what then is that act of attainder resorted to as a precedent? surely it cannot be as a precedent of that servile paroxysm of simulated loyalty with which the same men, who a few days before had shouted after the wheels of the good protector, now raked out the grave of the traitorous usurper, and dragged his wretched carcass through the streets; that servile and simulated loyalty, which affected to bow in obsequious admiration of the salutary lenity which their vindictive folly was labouring to frustrate; that servile and interested hypocrisy, which gave a hollow and faithless support to the power of the monarch, utterly regardless alike of his character or his safety.

That the example which this act of attainder held forth was never respected, appears from this, that it never has been followed in Great Britain, although that country has since that time been agitated by one revolution, and vexed by two rebellions!

So

So far from extending forfeiture or attainder beyond the existing law, the opinion of that wise and reflecting country was gradually maturing into a dislike of the principle altogether : until at last, by the statutes of Anne and George the second, she declares, that no forfeiture or attainder for treason should prejudice any other than the actual offender, nor work any injury to the heir or other person, after the death of a pretender to the throne. Why, said Mr. Curran, has Great Britain thus condemned the principle of forfeiture?—because she felt it to be unjust, and because she found it to be ineffectual.

Here Mr. Curran went into many reasons to prove the impolicy of severe penal laws. They have ever been found, he said, more to exasperate than to restrain : when the infliction is beyond the crime, the horror of the guilt is lost in the horror of the punishment, the sufferer becomes an object of commiseration, and the injustice of the state, of public odium. It was well observed, that in England the highwayman never murdered, because there the offender was not condemned to torture ! but in France, where the offender was broken on the wheel, the traveller seldom or never escaped ! what then is it in England that sends the traveller home with life, but the comparative mildness of English law ? what but the merciless cruelty of the French law, that gives the
atrocious

atrocious aggravation of murder to robbery? the multiplication of penal laws lessens the value of life, and when you lessen the value of life, you lessen the fear of death.

Look to the history of England upon this subject with respect to treason: notwithstanding all its formidable array of death, of Saxon forfeiture, and of feudal corruption of blood; in what country do you read of more treasons or of more rebellions? and why?—because these terrors do not restrain the traitor. Beyond all other delinquents he is likely to be a person of that ardent, enthusiastic and intrepid spirit, that is roused into more decisive and desperate daring by the prospect of peril.

Mr. Yorke thinks the child of the traitor, may be reclaimed to his loyalty by the restitution of his estate. Mr. Yorke perhaps might have reasoned better if he had looked to the still greater likelihood of making him a deadly enemy to the state, by the deadly ignominy inflicted on his father, and by the loss of his own inheritance.

How keenly did Hannibal pursue his vengeance which he had sworn against Rome? how much more enthusiastically would he have pursued his purpose, had that oath been taken upon a father's grave? for the avenging of a father's sufferings! for the avenging of what he would have called a father's wrongs!

It

If I am called upon, said he, to give more reasons, why this precedent has not been for more than a century and a half repeated, I will say, that a bill of attainder is the result of an unnatural union of the legislative and judicial functions; in which the judicial has no law to restrain it; in which the legislative has no rule to guide it, unless passion and prejudice which reject all rule and law, and be called rules and laws: it puts the lives and properties of men completely at the mercy of an arbitrary and despotic power.

Such were the acts of posthumous attainder in Ireland, in the reign of the arbitrary Elizabeth, who used these acts as a mere mode of robbing an Irish subject for the benefit of an English minion. Such was the act of the ninth of William III. not passed for the same odious and despicable purpose, but for a purpose equally arbitrary and unjust, the purpose of transferring the property of the country from persons professing one religion into the hands of those professing another, a purpose manifested and avowed by the remarkable clause in that act, which saves the inheritance to the heir of the traitor, provided that heir be a protestant! nor so brutally tyrannical in its operation, in as much as it gave a right to traverse and a trial by jury to every person claiming a right, and protected the rights of infants, until they should be of age, and capable to assert those rights.

There

There were yet, Mr. Curran said, other reasons why that precedent of the regicides was not followed in Great Britain. A government that means honestly will appeal to the affection, not to the fears of the people. A state must be driven to the last gasp, when it is driven to seek protection in the abandonment of the law in that melancholy avowal of its weakness and its fear.

Therefore it was not done in the rebellion of 1715, nor in that of 1745. He had hitherto, he said, abstained from adverting to the late transactions of Ireland; but he could not defraud his clients, or their cause of so pregnant an example. In this country penal laws had been tried beyond any example of any former times: what was the event? the race between penalty and crime was continued, each growing fiercer in the conflict, until the penalty could go no further, and *the fugitive turned upon the breathless pursuer.*

From what a scene of wretchedness and horror have we escaped? But, said he, I do not wish to annoy you by the *stench of those unburied and unrottened* examples of the *havoc* and the *impotence of penal law* pushed to its extravagance. I am more pleased to turn your attention to the happy consequences of temperate conciliatory government of equal law. Compare the latter with the former, and let your wisdom decide between the tempest and the calm!

I know it is a delicate subject, but let me presume to suggest what must be the impression upon this grieved and anxious country, if the rigour of the parliament shall seem at war with the mildness of the government, if the people shall have refuge in the mercy of the crown from the rigour of their own representatives.

But if at the same moment they shall see the convicted and the attainted secured in their lives and in their property by the wise lenity of the crown, while the parliament is visiting shame, and misery, and want, upon the *cradle of the unprotected infant*, who could not have offended—But I will not follow the idea, I will not see the inauspicious omen ; I pray that Heaven may avert it.

One topic more, said he, you will permit me to add. Every act of the sort ought to have a practical morality flowing from its principle : if loyalty and justice require that these infants should be deprived of bread ! must it not be a violation of that principle to give them food or shelter ? must not every loyal and just man wish to see them, in the words of the famous Golden Bull, “ always poor and necessitous, and for ever accompanied by the infamy of their father, languishing in continued indigence, and finding their punishment in living and their relief in dying.”

If the widowed mother should carry the orphan heir of her unfortunate husband to the
gate

gate of any man, who might feel himself touched with the sad vicissitudes of human affairs; who might feel a compassionate reverence for the noble blood that flowed in his veins; *nobler than the royalty that first ennobled it*: that like a rich stream rose till it ran and hid its fountain:—If, remembering the many noble qualities of his unfortunate father, his heart melted over the calamities of the child, if his heart swelled, if his eyes overflowed, if his too precipitated hand was stretched out by his pity, or his gratitude to the poor excommunicated sufferers, how could he justify the *rebel tear*, or the *traiterous humanity*?

I shall trespass no longer upon the patience for which I am grateful,—one word only, and I have done. And that is, once more, earnestly and solemnly to conjure you to reflect that the fact; I mean the fact of guilt or innocence, (which must be the foundation of this bill,) is not now, after the death of the party, capable of being tried, consistently with the liberty of a free people, or the unalterable rules of eternal justice.

And that as to the forfeiture and the ignominy which it enacts, that only can be punishment which lights upon guilt, and that can be only *vengeance* which *breaks upon INNOCENCE!!!*

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

IN DEFENCE OF

MR. JOHN HEVEY, PLAINTIFF;

CHARLES HENRY SIRR, Esq. DEFENDANT.

ON

AN ACTION FOR AN ASSAULT

AND

FALSE IMPRISONMENT.

COURT OF KING'S BENCH,

ON MONDAY, MAY 17, 1802.

MR. CURRAN stated the case for the plaintiff, in substance nearly to the following effect :

He began by telling the jury, it was the most extraordinary action he had ever met with. It must have proceeded from the most unexampled impudence in the plaintiff, if he has brought it wantonly ; or the most unparelled miscreancy in the defendant, if it shall appear supported by proof. And the event must stamp the most
condign

condign and indelible disgrace on the guilty defendant, unless an unworthy verdict should shift the scandal upon another quarter. On the record the action, he said, appeared short and simple; it was an action of trespass, *vi et armis*, for an assault, battery, and false imprisonment. But the facts that led to it, that explain its nature, and its enormity, and of course that should measure the damages, were neither short nor simple; the novelty of them might surprise, the atrocity must shock their feelings, if they had feelings to be shocked:—but, he said, he did not mean to address himself to any of their proud feelings of liberty; the season for that was past. There was indeed, he said, a time when, in addressing a jury upon very inferior violations of human rights, he had felt his bosom glow and swell with the noble and elevating consciousness of being a free-man, speaking to free-men, and in a free country; where, if he was not able to communicate the generous flame to their bosoms, he was not at least so cold as not to catch it from them. But that was a sympathy, which he was not now so foolish as to affect either to inspire or to participate. He would not insult them by the bitter mockery of such an affectation; buried as they were, he did not wish to conjure up the shades of departed freedom to flutter round their tomb, to haunt or to reproach them. Where freedom is no more, it is a mischievous profanation to use her language; because it tends to deceive the man who is no longer

longer free, upon the most important of all points, that is, the nature of the situation to which he is reduced; and to make him confound the licentiousness of words with the real possession of freedom. He meant not therefore, he said, to call for a haughty verdict, that might humble the insolence of oppression, or assert the fancied rights of independence. Far from it; he only asked for such a verdict, as might make some reparation for the most extreme and unmerited suffering, and might also tend to some probable mitigation of the public and general destiny. For this purpose, he said he must carry back their attention to the melancholy period of 1798. It was at that sad crisis, that the defendant, from an obscure individual, started into notice and consequence. It is in the hot-bed of public calamity, that such portentous and inauspicious products are accelerated without being matured. From being a town-major, a name scarcely legible in the list of public incumbrances, he became at once invested with all the real powers of the most absolute authority. The life and the liberty of every man seemed to be given up to his disposal. With this gentleman's extraordinary elevation began the story of the sufferings and ruin of the plaintiff. It seems, a man of the name of M'Guire was prosecuted for some offence against the state. Mr. Hevey, the plaintiff, by accident was in court; he was then a citizen of wealth and credit, a brewer in the first line of that business. Unfortunately

nately for him, he had heretofore employed the witness for the prosecution, and found him a man of infamous character. Unfortunately for himself he mentioned this circumstance in court. The counsel for the prisoner insisted on his being sworn; he was so. The jury were convinced, that no credit was due to the witness for the crown; and the prisoner was accordingly acquitted. In a day or two after, Major Sirr met the plaintiff in the street, asked how he dared to interfere in his business, and swore by God he would teach him how to meddle with "his people." Gentlemen, said Mr. Curran, there are two classes of prophets, one that derive their predictions from real or fancied inspiration, and who are sometimes mistaken. And another who prophecy what they are determined to bring about themselves. Of this second, and by far the most authentic class, was the major; for heaven you see has no monopoly of prediction. On the following evening, poor Hevey was dogged in the dark into some lonely alley; there he was seized, he knew not by whom, nor by what authority—and became in a moment, to his family, and his friends, as if he had never been. He was carried away in equal ignorance of his crime, and of his destiny; whether to be tortured, or hanged, or transported. His crime he soon learned; it was the treason which he had committed against the majesty of major Sirr. He was immediately conducted to a new place of imprisonment in the castle-yard,

yard, called the provost. Of this mansion of misery, of which you have since heard so much, major Sandys was, and I believe yet is, the keeper: a gentleman of whom I know how dangerous it is to speak; and of whom every prudent man will think, and talk with all due reverence. He seemed a twin-star of the defendant—equal in honour, in confidence; equal also (for who could be superior?) in probity and humanity. To this gentleman was my client consigned, and in his custody he remained about seven weeks, unthought of by the world, as if he had never existed. The oblivion of the buried is as profound as the oblivion of the dead; his family may have mourned his absence or his probable death; but why should I mention so paltry a circumstance? The fears, or the sorrows of the wretched give no interruption to the general progress of things. The sun rose and the sun set, just as it did before—the business of the government, the business of the castle, of the feast, or the torture, went on with their usual exactness and tranquillity. At last Mr. Hevey was discovered among the sweepings of the prison; and was at last to be disposed of. He was at last honoured with the personal notice of major Sandys.—“Hevey, (says the major,) I have seen you ride I think a smart sort of a mare; you can’t use her here; you had better give me an order for her.” The plaintiff, you may well suppose, by this time had a tolerable idea of his situation; he thought he might have much to fear from a refusal, and

and something to hope from compliance; at all events, he saw it would be a means of apprizing his family that he was not dead:—he instantly gave the order required. The major graciously accepted it, saying, your courtesy will not cost you much, you are to be sent down to-morrow to Kilkenny to be tried for your life; you will most certainly be hanged; and you can scarcely think that your journey to the other world will be performed on horseback. The humane and honourable major was equally a prophet with his compeer. The plaintiff on the next day took leave of his prison, as he supposed for the last time, and was sent under a guard to Kilkenny, then the head-quarters of sir Charles Asgil, there to be tried by court-martial for such crime as might chance to be alleged against him. In any other country the scene that took place on that occasion might excite no little horror and astonishment; but with us, these sensations have become extinguished by frequency of repetition. I am instructed, that a proclamation was sent forth, offering a reward to *any* man, who would come forward, and give any evidence against the traitor Hevey. An unhappy wretch, who had been shortly before condemned to die, and was then lying ready for execution, was allured by the proposal. His integrity was not firm enough to hesitate long, between the alternative proposed; pardon, favour, and reward, with perjury, on one side; the rope and the gibbet on the other. His loyalty decided the question against his soul.

He

He was examined, and Hevey was appointed by the sentence of a mild, and, no doubt, enlightened court-martial, to take the place of the witness, and succeeded to the vacant halter. Hevey, you may suppose (continued Mr. Curran,) now thought his labours at an end; but he was mistaken: his hour was not yet come. You are probably, gentlemen, or you, my lords, are accounting for his escape, by the fortunate recollection of some early circumstances that might have smote upon the sensibility of sir Charles Asgil, and made him believe, that he was in debt to Providence for the life of one innocent though convicted victim. But it was not so; his escape was purely accidental. The proceedings upon this trial happened to meet the eye of lord Cornwallis. The freaks of fortune are not always cruel; in the bitterness of her jocularly, you see she can adorn the miscreancy of the slave, in the trappings of power, and rank, and wealth. But her playfulness is not always inhuman; she will sometimes, in her gambols, fling oil upon the wounds of the sufferer; she will sometimes save the captive from the dungeon and the grave, were it not only, that she might afterwards re-consign him to his destiny, by the reprisal of capricious cruelty upon fantastic commiseration. Lord Cornwallis read the transmiss of Hevey's condemnation; his heart recoiled from the detail of stupidity and barbarity. He dashed his pen across the odious record, and ordered that Hevey should be forthwith liberated. I cannot but highly honour

honour him for his conduct in this instance; nor, when I recollect his peculiar situation at that disastrous period, can I much blame him for not having acted towards that court with the same vigour and indignation, which he hath since shewn with respect to those abominable jurisdictions. Hevey was now a man again—he shook the dust off his feet against his prison gate: his heart beat the response to the anticipated embrace of his family, and his friends, and he returned to Dublin. On his arrival here, one of the first persons he met with was his old friend, major Sandys. In the eye of poor Hevey, justice and humanity had shorn the major of his beams—he no longer regarded him with respect or terror. He demanded his mare; observing, that though he might have travelled to heaven on foot, he thought it more comfortable to perform his earthly journies on horseback. Ungrateful villain, says the major; is this the gratitude you shew to his majesty and to me, for our clemency to you? You shan't get possession of the beast, which you have forfeited by your treason; nor can I suppose, that a noble animal, that had been honoured with conveying the weight of duty and allegiance, could condescend to load her loyal loins with the vile burden of a convicted traitor. As to the major (said Mr. Curran) I am not surprised that he spoke and acted as he did. He was no doubt astonished at the impudence and novelty of calling the privileges of official plunder into question. Hardened by the numberless instances
of

of that mode of unpunished acquisition, he had erected the frequency of impunity into a sort of warrant of spoil and rapine. One of these instances, I feel, I am now bringing to the memory of your lordship. A learned and respected brother barister had a silver cup; the major heard that for many years it had borne an inscription of "*Erin go brach*" which meant "*Ireland for ever.*" The major considered this perseverance in guilt for such a length of years as a forfeiture of the delinquent vessel. My poor friend was accordingly robbed of his cup. But upon writing to the then attorney-general, that excellent officer felt the outrage, as it was his nature to feel every thing that was barbarous or base; and the major's loyal sideboard was condemned to the grief of restitution. And here, (said Mr. Curran) let me say in my own defence, that this is the only occasion, upon which I have ever mentioned this circumstance with the least appearance of lightness. I have often told the story in a way that it would not become to tell it here, I have told it in the spirit of those feelings, which were excited at seeing, that one man could be sober and humane, at a crisis, when so many thousands were drunk and barbarous. And probably my statement was not stinted by the recollection, that I held that person in peculiar respect and regard. But little does it signify, whether acts of moderation and humanity are blazoned by gratitude, by flattery, or by friendship; they are recorded in the heart from which they

they sprung ; and in the hour of adverse vicissitude, if it should ever come, sweet is the odour of their memory, and precious is the balm of their consolation. But to return: Hevey brought an action for his mare. The major not choosing to come into court, and thereby suggest the probable success of a thousand actions, restored the property, and paid the costs of the suit to the attorney of Mr. Hevey. It may perhaps strike you, my lord, said Mr. Curran, as if I was stating what was not relevant to the action. It is materially pertinent ; I am stating a system of concerted vengeance and oppression. These two men acted in concert ; they were Archer and Aimwell. You master at Litchfield, and I at Coventry. You plunderer in the gaol, and I tyrant in the street. And in our respective situations we will co-operate in the common cause of robbery and vengeance. And I state this (said Mr. Curran) because I see Major Sandys in court: and because I feel I can prove the fact, beyond the possibility of denial. If he does not dare to appear, so called upon, as I have called upon him, I prove it by his not daring to appear. If he does venture to come forward, I will prove it by his own oath, or if he ventures to deny a syllable that I have stated, I will prove by irrefragable evidence that his denial was false and perjured. Thus far, gentlemen, (said Mr. Curran) we have traced the plaintiff through the strange vicissitudes of barbarous imprisonment, of atrocious condemnation, and of accidental deliverance.

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(Here Mr. Curran described the feelings of the plaintiff and of his family upon his restoration ; his difficulties on his return ; his struggle against the aspersions on his character ; his renewed industry ; his gradual success ; the implacable malignity of Sirr and of Sandys ; and the immediate cause of the present action.) Three years, said Mr. Curran, had elapsed since the deliverance of my client ; the public atmosphere had cleared—the private destiny of Hevey seemed to have brightened, but the malice of his enemies had not been appeased. On the 8th of September last, Mr. Hevey was sitting in a public coffee-house, major Sirr was there. Mr. Hevey was informed that the major had at that moment said, that he (Hevey) ought to have been hanged. The plaintiff was fired at the charge ; he fixed his eye on Sirr, and asked, if he had dared to say so ? Sirr declared that he had, and had said truly. Hevey answered, that he was a slanderous scoundrel. At the instant Sirr rushed upon him, and assisted by three or four of his satellites, who had attended him in disguise, secured him and sent him to the castle guard, desiring that a receipt might be given for the villain. He was sent thither. The officer of the guard chanced to be an Englishman, but lately arrived in Ireland ; he said to the bailiffs, if this was in England, I should think this gentleman entitled to bail, but I don't know the laws of this country. However I think you had better loosen those irons on his wrists, or I think they may kill him.

Major

Major Sirr, the defendant, soon arrived, went into his office, and returned with an order which he had written, and by virtue of which Mr. Hevey was conveyed to the custody of his old friend and goalar, major Sandys. Here he was flung into a room of about thirteen feet by twelve—it was called the hospital of the provost.—It was occupied by six beds, in which were to lie fourteen or fifteen miserable wretches, some of them sinking under contagious diseases. On his first entrance, the light that was admitted by the opening of the door, disclosed to him a view of the sad fellow-sufferers, for whose loathsome society he was once more to exchange the chearful haunts of men, the use of open air, and of his own limbs; and where he was condemned to expiate the disloyal hatred and contempt, which he had dared to shew to the overweening and felonious arrogance of slaves in office, and minions in authority; here he passed the first night, without bed or food. The next morning his humane keeper, the major, appeared. The plaintiff demanded, “why he was so imprisoned,” complained of hunger, and asked for the goal allowance. Major Sandys replied, with a torrent of abuse, which he concluded by saying,—“Your crime is your insolence to major Sirr; however, he disdains to trample upon you—you may appease him by proper and contrite submission; but unless you do so, you shall rot where you are.—I tell you this, that if government will not protect us, by God, we will not protect them. You will probably,

(for

(for I know your insolent and ungrateful hardness,) attempt to get out by an habeas corpus; but in that you will find yourself mistaken, as such a rascal deserves." Hevey was insolent enough to issue an habeas corpus, and a return was made upon it—"that Hevey was in custody under a warrant from general Craig, on a charge of treason." That this return was a gross falsehood, fabricated by Sirr, I am instructed to assert.—Let him prove the truth of it if he can. The judge, before whom this return was brought, felt that he had no authority to liberate the unhappy prisoner; and thus, by a most inhuman and malicious lie, my client was again remanded to the horrid mansion of pestilence and famine. Mr. Curran proceeded to describe the feelings of Mr. Hevey,—the despair of his friends—the ruin of his affairs—the insolence of Sandys—his offer to set him at large, on condition of making an abject submission to Sirr—the indignant rejection of Hevey,—the supplication of his father and sister, rather to submit to any enemy, however base and odious, than perish in such a situation;—the repugnance of Hevey—the repetition of kind remonstrances: and the final submission of Hevey to their entreaties;—his signing a submission, dictated by Sandys, and his enlargement from confinement. Thus, said Mr. Curran, was he kicked from his goal into the common mass of his fellow slaves, by yielding to the tender entreaties of the
kindred

kindred that loved him, to sign, what was in fact, a release of his claim to the common rights of a human creature, by humbling himself to the brutal arrogance of a pampered slave. But he did suffer the dignity of his nature to be subdued by its kindness;—he has been enlarged, and he has brought the present action. As to the facts that he had stated, Mr. Curran said, he would make a few observations :—it might be said for the defendant, that much of what was stated may not appear in proof. To that, he answered, that he would not have so stated, if he had not seen major Sandys in court ; he had therefore put the facts against him in a way, which he thought the most likely to rouse him to a defence of his own character, if he dared to be examined as a witness. He had, he trusted, made him feel, that he had no way of escaping universal detestation, but by denying those charges, if false ; and if they were not denied, being thus publicly asserted, his entire case was admitted—his original oppression in the provost was admitted—his robbery of the cup was admitted—his robbery of the mare was admitted—the lie so audaciously forged on the habeas corpus was admitted—the extortion of the infamous apology was admitted.—Again, said Mr. Curran, I challenge this worthy compeer of a worthy compeer to make his election, between proving his guilt by his own corporal oath, or by the more credible modesty of his silence. And now, said Mr. Curran, I have given you a mere sketch of this extraordinary history. No country governed

by any settled laws, or treated with common humanity, could furnish any occurrences of such unparalleled atrocity ; and if the author of *Caleb Williams*, or of the *Simple Story*, were to read the tale of this man's sufferings, it might, I think, humble the vanity of their talents, (if they are not too proud to be vain,) when they saw how a much more fruitful source of incident could be found in the infernal workings of the heart of a malignant slave, than in the richest copiousness of the most fertile and creative imagination. But it is the destiny of Ireland to be the scene of such horrors, and to be stung by such reptiles to madness and to death. And now, said Mr. Curran, I feel a sort of melancholy pleasure, in getting nearly rid of this odious and nauseous subject. It remains to me only to make a few observations as to the damages you ought to give, if you believe the case of the plaintiff to be as I have stated. I told you before, that neither pride nor spirit belong to our situation ; I should be sorry to influence you into any apish affectation of the port or stature of freedom or independence. But my advice to you is, to give the full amount of the damages laid in the declaration ; and I'll tell you why I give you that advice : I think no damages could be excessive, either as a compensation for the injury of the plaintiff, or as a punishment of the savage barbarity of the defendant ; but my reasons for giving you this advice lie much deeper than such considerations ; they spring from a view of our present
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most forlorn and disastrous situation. You are now in the hands of another country; that country has no means of knowing your real condition, except by information that she may accidentally derive from transactions of a public nature. No printer would dare to publish the thousand instances of atrocity, which we have witnessed as hideous as the present, nor any one of them, unless he did it in some sort of confidence, that he could scarcely be made a public sacrifice by brutal force, for publishing what was openly proved in a court of justice. Mr. Curran here made some pointed observations on the state of a country, where the freedom of the press is extinguished, and where another nation, by whose indolent mercy, or whose instigated fury, we may be spared or sacrificed, can know nothing of the extent of our sufferings, or our delinquency, but by casual hearsay. I know, said he, that those philosophers have been abused, who think that men are born in a state of war. I confess I go further, and firmly think they cannot be reclaimed to a state of peace. When I see the conduct of man to man, I believe it. When I see the list of offences in every criminal code in Europe—when I compare the enormity of their crimes with the still greater enormity of their punishments, I retain no doubt upon the subject. But if I could hesitate as to men in the same community, I have no doubt of the inextinguishable malignity that will for ever inflame nation against nation. Well was it said,

that a "nation has no heart;" towards each other nations are uniformly envious, vindictive, oppressive, and unjust. What did Spain feel for the murders or the robberies of the west?—nothing. And yet, at that time, she prided herself as much as England ever did on the elevation of her sentiment, and the refinement of her morality. Yet what an odious spectacle did she exhibit?—her bosom burning with all the fury of rapine and tyranny; her mouth full of the pious praises of the living God, and her hands red with the blood of his innocent and devoted creatures. When I advise you therefore to mark your feelings of the case before you, do not think I mean, that you could make any general impression on the morality, or tenderness of the country, whose property we are become. I am not so foolish as to hope any such effect: practical justice and humanity are virtues that require laborious acts, and mortifying privations; expect not therefore to find them; appeal not to them. But there are principles and feelings substituted in their place, a stupid preference and admiration of self, an affectation of humanity, and a fondness for unmerited praise; these you may find, for they cost nothing; and upon them you may produce some effect. When outrages of this kind are held up to the world, as done under the sanction of their authority, they must become odious to mankind, unless they let fall some reprobation on the immediate instruments and abettors of such deeds. An Irish lord-lieutenant will shrink from
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the imputation of countenancing them. Great Britain will see, that it cannot be her interest to encourage such an infernal spirit of subaltern barbarity, that reduces man to a condition lower than that of the beast of the field. They will be ashamed of employing such instruments as the present defendant. When the government of Ireland lately gave up the celebrated O'Brien to the hands of the executioner, I have no little reason to believe that they suffered as they deserved on the occasion. I have no doubt, but that your verdict of this day, if you act as you ought to do, will produce a similar effect. And as to England, I cannot too often inculcate upon you, that she knows nothing of our situation. When torture was the daily and ordinary system of the executive government, it was denied in London, with a profligacy of effrontery, equal to the barbarity with which it was exhibited in Dublin; and, if the facts that shall appear to-day should be stated at the other side of the water, I make no doubt, that very near one hundred worthy persons would be ready to deny their existence upon their honour, or, if necessary, upon their oaths.

I cannot also but observe to you, continued Mr. Curran, that the real state of one country is more forcibly impressed on the attention of another, by a verdict on such a subject as this, than it could be by any general description. When you endeavour to convey an idea of a great number of barbarians, practising a great variety of cruelties

ties upon an incalculable multitude of sufferers, nothing defined or specific finds its way to the heart, nor is any sentiment excited, save that of a general erratic unappropriated commiseration. If, for instance, you wished to convey to the mind of an English matron the horrors of that direful period, when, in defiance of the remonstrance of the ever to be lamented Abercromby, our poor people were surrendered to the licentious brutality of the soldiery, by the authority of the state ; you would vainly endeavour to give her a general picture of lust, and rapine, and murder, and conflagration. By endeavouring to comprehend every thing, you would convey nothing. When the father of poetry wishes to pourtray the movements of contending armies, and an embattled field, he exemplifies only, he does not describe ; he does not venture to describe the perplexed and promiscuous conflicts of adverse hosts, but by the acts and fates of a few individuals he conveys a notion of the vicissitudes of the fight, and the fortunes of the day. So should your story to her keep clear of generalities ; instead of exhibiting the picture of an entire province, select a single object ; and even in that single object do not release the imagination of your hearer from its task, by giving more than an outline ; take a cottage ; place the affrighted mother of her orphan daughters at the door, the paleness of death upon her face, and more than its agonies in her heart ; her aching eye, her anxious ear, struggle through the mist of closing day, to catch the approaches of desolation and dishonour. The ruffian gang
arrives,

arrives, the feast of plunder begins, the cup of madness kindles in its circulation. The wandering glances of the ravisher become concentrated upon the shrinking and devoted victim.—You need not dilate, you need not expatiate ; the unpolluted mother, to whom you tell the story of horror, beseeches you not to proceed ; she presses her child to her heart, she drowns it in her tears, her fancy catches more than an angel's tongue could describe ; at a single view she takes in the whole miserable succession of force, of profanation, of despair, of death. So it is in the question before us. If any man shall hear of this day's transaction, he cannot be so foolish as to suppose that we have been confined to a single character, like those now brought before you. No, gentlemen ; far from it ; he will have too much common sense, not to know, that outrages like this are never solitary, that, where the public calamity generates imps like those, their number is as the sands of the sea, and their fury as insatiable as its waves. I am therefore anxious, that our *masters* should have one authenticated example of the treatment which our unhappy country suffers under the sanction of their authority ; it will put a strong question to their humanity, if they have any, to their prudence, if their pride will let them listen to it ; or, at least, to that anxiety for reputation, to that pretension to the imaginary virtues of mildness and mercy, which even those countries the most divested of them are so ready to assert their claim, and so credulously disposed to believe that claim allowed.

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There are some considerations respecting yourselves, and the defendant, to which I should wish to say a word. You may perhaps think your persons unsafe, if you find a verdict against so considerable a person. I know his power, as well as you do—I know he might send you to the provost, as he has done the plaintiff, and forge a return on any writ you might issue for your deliverance—I know there is no spot in the devoted nation, (except that on which we now are), where the story of oppression can be told or heard; but I think you can have no well founded apprehensions. There is a time, when cruelty and oppression become satiated and fatigued; in that satiety at least you will find yourselves secure. But there is still a better security for you: the gratitude of the worthy defendant—if any thing could add to his honours and his credit, and his claims, it would be your verdict for the plaintiff; for in what instance have you ever seen any man so effectually accredited and recommended, as by the public execration? what a man, for instance, might not O'Brien have been, if the envy of the gibbet had not arrested the career of his honours and preferments? In every point of view, therefore, I recommend to you to find, and to find liberally for the plaintiff. I have founded my advice upon the real circumstances of your situation; I have not endeavoured to stimulate you into any silly hectic of fancied liberty. I do not call upon you to expose yourselves by the affectation of vindicating the cause of freedom, and humanity; much less do I wish to exhibit ourselves to those, whose property

perty we are, as indignant or contumacious under their authority. Far from it, they are unquestionably the proprietors of us, they are intitled of right to drive us, and to work us ; but we may be permitted modestly to suggest, that, for their own sakes, and for their own interest, a line of moderation may be drawn. That there are excesses of infliction, that human nature cannot bear. With respect to her western negroes, Great Britain has had the wisdom, and humanity to feel the justice of this observation, and in some degree to act upon it ; and I have too high an opinion of that great, and philosophic nation, not to hope, that she might think us not undeserving of equal mildness ; provided it did not interfere with her just authority over us. It would, I should even think, be for her credit, that having the honour of so illustrious a rider, we should be kept in some sort of condition, somewhat bordering upon spirit, which cannot be maintained if she suffers us to be utterly broken down, by the malicious wantonness of her grooms and jockeys. Mr. Curran concluded by saying, that the cause was of no inconsiderable expectation ; and that in whatever light the jury regarded it whether with respect to the two countries, or to Ireland singly, or to the parties concerned, or to their own sense of character and public duty, or to the natural consequences that must flow from the event, they ought to consider it with the most profound attention, before they agreed upon their verdict.

Verdict for the Plaintiff, £150. Damages and Costs.
SPEECH

S P E E C H
OF
JOHN PHILPOT CURRAN, Esq.
IN DEFENCE OF
OWEN KIRWAN,
FOR
HIGH TREASON;
AT THE
SESSIONS-HOUSE, GREEN-STREET,
ON SATURDAY, OCTOBER 1, 1803.

MR. CURRAN rose and said, that it had become his duty to state to the court and jury the defence of the prisoner. He said he had been chosen for that very unpleasant task, without his concurrence or knowledge—but as soon as he was apprised of it, he accepted it without hesitation. To assist a human being, labouring under the most awful of all situations, trembling in the dreadful alternative of honourable life, or ignominious death, was what no man, worthy of the name, could refuse to man—but it would be peculiarly base in any person who had the honour of wearing the king's gown,

gown, to leave the king's subject undefended, until a sentence pronounced upon him had shewn, that neither in fact, nor in law, could any defence avail him. He could not, however, but confess, that he felt no small consolation when he compared his present with his former situation upon similar occasions.—In those sad times to which he alluded, it was frequently his fate to come forward to the spot where he then stood, with a body sinking under infirmity and disease, and a mind broken with the consciousness of public calamity, created and exasperated by public folly. It had pleased heaven that he should live to survive both those afflictions, and he was grateful to its mercy. I now, said he, come here through a composed and quiet city—I read no expression in any face, save such as marks the ordinary feelings of social life, or the various characters of civil occupation—I see no frightful spectacle of infuriated power, or suffering humanity—I see no tortures—I hear no shrieks—I no longer see the human heart charred in the flame of its own wild and paltry passions—black and bloodless—capable only of catching and communicating that destructive fire by which it devours, and is itself devoured.—I no longer behold the ravages of that odious bigotry by which we were deformed, and degraded, and disgraced—a bigotry against which no honest man should ever miss an opportunity of putting his countrymen, of all sects and of all descriptions, upon their guard—it is the accursed and promiscuous progeny

geny of servile hypocrisy, of remorseless lust of power—of insatiate thirst of gain—labouring for the destruction of man, under the specious pretences of religion—her banner stolen from the altar of God, and her allies congregated from the abysses of hell, she acts by votaries to be restrained by no compunctions of humanity—for they are dead to mercy; to be reclaimed by no voice of reason—for refutation is the bread on which their folly feeds—they are outlawed alike from their species and their Creator; the object of their crime is social life—and the wages of their sin is social death—for though it may happen that a guilty individual should escape from the law that he has broken, it cannot be so with nations—their guilt is too unwieldy for such escape—they may rest assured that Providence has, in the natural connexion between causes and their effects, established a system of retributive justice, by which the crimes of nations are sooner or later avenged by their own inevitable consequences. But that hateful bigotry—that baneful discord, which fired the heart of man, and steeled it against his brother, has fled at last, and I trust for ever. Even in this melancholy place I feel myself restored and re-created by breathing the mild atmosphere of justice, mercy, and humanity—I feel I am addressing the parental authority of the law—I feel I am addressing a jury of my countrymen, my fellow subjects, and my fellow christians—against whom my heart is waging no concealed hostility—from whom my face is disguising

guising no latent sentiment of repugnance or disgust. I have not now to touch the high strung chords of an angry passion in those that hear me—nor have I the terror of thinking, that if those chords cannot be snapt by the stroke, they will be only provoked into a more instigated vibration.

Mr. Curran then proceeded to observe, that this happy change in the minds and feelings of all men was the natural consequence of that system of mildness and good temper which had been recently adopted, and which he strongly exhorted the jury to imitate, and to improve upon—that they might thereby demonstrate to ourselves, to Great Britain, and to the enemy, that we were not that assemblage of fiends which we had been alledged to be—unworthy of the ordinary privilege of regular justice, or the lenient treatment of a merciful government.—He said, it was of the utmost importance to be on their guard against the wicked and mischievous representation of the circumstances which called them then together—they ought not to take from any unauthenticated report those facts which they could have directly from sworn evidence. He had heard much of the dreadful extent of the conspiracy against this country—of the narrow escape of the government. They now saw the fact as it was. By the judicious adoption of a mild and conciliatory system of conduct, what

was

was six years ago a formidable rebellion, had now dwindled down to a drunken, riotous insurrection—disgraced, certainly, by some odious atrocities—its objects, whatever they were, no doubt, highly criminal; but as an attack upon the state, of the most contemptible insignificance. —He did not wonder that the patrons of burning and torture should be vexed that their favourite instruments were not employed in recruiting for the rebellion. He had no doubt that had they been so employed, the effect would have followed, and that an odious, drunken insurrection, would have been easily swelled into a formidable rebellion—nor was it strange that persons so mortified should vent themselves in wanton exaggerated misrepresentation, and in unmerited censure—in slandering the nation in the person of the viceroy—and the viceroy in the character of the nation—and that they should do so, without considering that they were weakening the common resources against common danger, by making the different parts of the empire odious to each other; and by holding out to the enemy, and falsely holding out, that we were too much absorbed in civil discord to be capable of effectual resistance. In making this observation, he said his wish was merely to refute a slander upon his country. He had no pretension to be the vindicator of the lord lieutenant of Ireland, whose person he did not know that he had ever seen: at the same time he said, that
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when he was so necessarily forced upon the subject, he felt no disposition to conceal the respect and satisfaction with which he saw the king's representative comport himself as he did, at a crisis of no little anxiety, though of no considerable danger, if we may believe the evidence we heard. He thought it was a proof of his excellency's firmness and good sense, not to discredit his own opinion of his confidence in the public safety, by an ostentatious display of unnecessary open preparation; and he thought he did himself equal honour by preserving his usual temper, and not suffering himself to be exasperated by the event, when it did happen, into the adoption of any violent or precipitate measures. Perhaps he (Mr. Curran) might even be excused if he confessed that he was not wholly free from some professional vanity, when he saw that the descendant of a great lawyer was capable of remembering, what, without the memory of such an example, he perhaps might not have done, that even in the moment of peril the law is the best safeguard of the constitution. At all events, he felt, that a man, who at all times had so freely censured the extravagancies of power and force as he had done, was justified, if not bound, by the consistency of character, to give the fair attestation of his opinion to the exercise of wisdom and humanity *wherever* he found them; whether in a friend or in a stranger. He hoped, he said, that these preliminary observations were
not

not wantonly and irrelevantly delaying them from the question which they were to try, and which he was ready to enter into; but there still remained a circumstance to be observed upon for a moment before they proceeded to the real subject of their enquiry, the guilt or innocence of the prisoner; the fact that had been so impressedly stated: the never to be too much lamented fate of that excellent man lord Kilwarden—(and here Mr. Curran drew a character of him, as marked by the most scrupulous anxiety for justice, as by the mildest and tenderest feelings of humanity)—But, said he, let us not wantonly slander the character of the nation by giving any countenance to the notion, that the horror of such a crime could be extended farther than the actual perpetration of the deed. The general indignation, the tears that were shed at the sad news of his fate, shew that we are not that nest of demons on whom any general stigma could attach from such an event; the wicked wretch himself, perhaps, has cut off the very man, through whose humanity he might have escaped the consequences of other crimes; and by an hideous aggravation of his guilt, has given another motive to Providence to trace the murderer's steps, and secure the certainty of his punishment; but on this occasion the jury should put it out of their minds, and think nothing of that valuable man, save his last advice, "that no person should perish but by the just sentence of the law;" and that advice he hoped they would honour

honour, not by idle praise, but by strict observance.

Mr. Curran now proceeded to state the charge in the indictment, and the evidence adduced; and contended that the testimony shewed no fact of conspiracy—no adopted object of treason—no actual attack—no number of persons engaged that could possibly be adequate to the accomplishment of such an object. He strongly reprobated the idea of acting upon what was called notoriety of rebellion—notoriety was at best but another name for reputation, which could not, even by law, be given in evidence in any criminal case, and which, *à fortiori*, could not sustain a verdict of conviction; but, he said, if the actual evidence of the guilt was thus weak, it was not unfair to consider the probability of such a conspiracy at the present time. It was clear from the evidence that it could not be imputed to any particular sect, or party, or faction, because no sect or faction could fail, had they acted in it, of engaging one hundred times the number of deluded instruments in their design. We may then fairly ask, is it likely that the country at large, setting even apart all moral tie of duty, or allegiance, or the difficulty, or the danger, could see any motive of interest to recommend to them the measure of separating from England, or fraternizing with France? Was there any description

of men in Ireland who could expect any advantage from such a change? And this reasoning, he said, was more pertinent to the question, because politics were not now, as heretofore, a dead science, in dead language; they had now become the subject of the day, vernacular and universal, and the repose which the late system of Irish government had given the people for reflection had enabled them to consider their own condition, and what they, or any other country, could have to hope from France, or rather from its present master. He said he scorned to allude to that personage merely to scold or to revile him; unmeaning obloquy may shew that we do not love the object, but certainly that we do not fear him.—He then adverted to the present condition of Bonaparte; a stranger—an usurper—getting possession of a numerous, proud, volatile, and capricious people; getting that possession by military force—able to hold it only by force: to secure his power he found, or thought he found it necessary to abolish all religious establishments, as well as all shadow of freedom. He had completely subjugated all the adjoining nations. Now, said Mr. Curran, it is clear that there are but two modes of holding states or the members of the same state together, namely, community of interest or predominance of force—the former is the natural bond of the British empire; their interest, their hopes, their dangers can be no other than one and the same, if they are not stupidly
blind

blind to their own situation ; and stupidly blind indeed must they be, and justly must they incur the inevitable consequences of that blindness and stupidity, if they have not fortitude and magnanimity enough to lay aside those mean and narrow jealousies, which have hitherto prevented that community of interest and unity of effort, by which alone we can stand, and without which we must fall together. But force only can hold the requisitions of the French consul ;—what community of interest can he have with the different nations that he has subdued and plundered?—clearly none. Can he venture to establish any regular and protected system of religion amongst them ? Wherever he erected an altar, he would set up a monument of condemnation and reproach upon those wild and fantastic speculations which he is pleased to dignify with the name of Philosophy, but which other men, perhaps, because they are endowed with a less aspiring intellect, conceive to be a desperate anarchical atheism, giving to every man a dispensing power for the gratification of his passion, teaching him that he may be a rebel to his conscience with advantage, and to his God with impunity. Just as soon would the government of Britain venture to display the Crescent in their churches, as an honorary member of all faiths to shew any reverence to the Cross in his dominions. Apply the same reasoning to liberty :—can he venture to give any reasonable portion of it to his subjects

at home, or his vassals abroad? The answer is obvious: sustained merely by military force, his unavoidable policy is to make *the army every thing, and the people nothing*. If he ventured to elevate his soldiers into citizens, and his wretched subjects into freemen, he would form a confederacy of mutual interest between both, against which he could not exist a moment. If he relaxed in like manner with Holland, or Belgium, or Switzerland, or Italy, and withdrew his armies from them, he would excite and make them capable of instant revolt. There is one circumstance which just leaves it possible for him not to chain them down still more rigorously than he has done, and that is, the facility with which he can pour military reinforcements upon them in case of necessity. But destitute as he is of a marine, he could look to no such resource with respect to any insular acquisition, and of course he should guard against the possibility of danger by so complete and merciless a thralldom as would make any effort of resistance physically impossible.—Perhaps, my lords, and gentlemen, continued Mr. Curran, I may be thought the apologist, instead of the reviler of the ruler of France. I affect not either character—I am searching for the motives of his conduct, and not for the topics of his justification. I do not affect to trace those motives to any depravity of heart or of mind which accident may have occasioned for the season, and which reflection or compunction may

may extinguish or allay, and thereby make him a completely different man with respect to France and to the world ; I am acting more fairly and more usefully by my country, when I shew, that his conduct must be so swayed by the permanent pressure of his situation, by the controul of an unchangeable and inexorable necessity, that he cannot dare to relax or relent without becoming the certain victim of his own humanity or contrition. I may be asked, are these merely my own speculations, or have others in Ireland adopted them ; I answer freely, *non meus hic sermo est*. It is, to my own knowledge, the result of serious reflection in numbers of our countrymen. In the storm of arbitrary sway, in the distraction of torture and suffering, the human mind had lost its poise and its tone, and was incapable of sober reflection ; but, by removing those terrors from it, by holding an even hand between all parties, by disdaining the patronage of any sect or faction, the people of Ireland were left at liberty to consider her real situation and interest, and happily for herself, I trust in God, she has availed herself of the opportunity. With respect to the higher orders even of those who thought they had some cause to complain, I know this to be the fact ; they are not so blind as not to see the difference between being proud and jealous, and punctilious in any claim of privilege or right between themselves and their fellow-subjects, and the mad and desperate depravity of seeking the redress of any dissatisfaction

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faction that they might feel, by an appeal to force, or by the dreadful recourse to treason and to blood. As to the humbler orders of our people, for whom I confess I feel the greatest sympathy, because there are more of them to be undone, and because, from want of education, they must be more liable to delusion ; I am satisfied the topics to which I have adverted apply with still greater force to them than to those who are raised above them. I have not the same opportunity of knowing their actual opinions ; but if their opinions be other than I think they ought to be, would to God they were present in this place, or that I had the opportunity of going into their cottages, and they well know I should not disdain to visit them, and to speak to them the language of affection and candour on the subject ; I should have little difficulty in shewing to their quick and apprehensive minds, how easy it is when the heart is incensed to confound the evils which are inseparable from the destiny of imperfect man, with those which arise from the faults or errors of his political situation : I would put a few questions to their candid and unadulterated sense : I would ask them—Do you think that you have made no advance to civil prosperity within the last twenty years ? Are your opinions of modern and subjugated France the same that you entertained of popular and revolutionary France fourteen years ago ? Have you any hope, that if the first consul got possession of your island, he would treat you
half

half so well as he does those countries at his door whom he must respect more than he can respect or regard you? And do you know how he treats those unhappy nations? You know that in Ireland there is little personal wealth to plunder—that there are few churches to rob.—Can you then doubt that he would reward his rapacious generals and soldiers by parcelling out the soil of the island among them, and by dividing you into lots of serfs to till the respective lands to which they belonged? Can you suppose that the perfidy and treason of surrendering your country to an invader would to your new master be any pledge of your allegiance? Can you suppose that while a single French soldier was willing to accept an acre of Irish ground, that he would leave that acre in the possession of a man, who had shewn himself so wickedly and so stupidly dead to the suggestions of the most obvious interest, and to the ties of the most imperious moral obligations? To what do you look forward with respect to the aggrandisement of your sect? Are you protestants? He has abolished protestantism with christianity. Are you catholics? Do you think he will raise you to the level of the pope? Perhaps, and I think, he would not; but if he did, could you hope more privilege than he has left his holiness? And what privilege has he left him? he has reduced his religion to be a mendicant for contemptuous toleration, and he has reduced his person to beggary and to rags. Let me ask you a
further

urther question—Do you think he would feel any kind hearted sympathy for you? Answer yourselves by asking, what sympathy does he feel for Frenchmen, whom he is ready by thousands to bury in the ocean, in the barbarous gambling of his wild ambition? What sympathy then could bind him to you? He is not your countryman—the scene of your birth and your childhood is not endeared to his heart by the reflection, that it was also the scene of his: he is not your fellow christian—he is not, therefore, bound to you by any similarity of duty in this world, or by any union of hope beyond the grave. What then could you suppose the object of his visit, or the consequence of his success? Can you be so foolish as not to see, that he would use you as slaves, while he held you, and that when he grew weary, which he soon would become, of such a worthless and precarious possession, he would carry you to market in some treaty of peace, barter you for some more valuable concession, and surrender you to expiate by your punishment and degradation, the advantage you had given him by your follies and your crimes? There is another topic on which a few words might be addressed to the deluded peasant of this country: he might be asked—What could you hope from the momentary success of any effort to subvert the government by mere intestine convulsion? Could you look forward to the hope of liberty or property; where are the characters, the capacities, and the motives of those that have embarked
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in those chimerical projects—you see them a despicable gang of needy adventurers; desperate from guilt and poverty; uncountenanced by a single individual of probity or name; ready to use you as the instruments, and equally ready to abandon you by treachery or flight, as the victims of their crimes. For a short interval murder and rapine might have their sway; but do not be such fools as to think, that though robbing might make a few persons poor, it could make many persons rich. Do not be so silly as to confound the destruction of property with the partition of wealth. Small must be your share of the spoil, and short your enjoyment of it. Soon, trust me, very soon would such a state of things be terminated by the very atrocities of its authors. Soon would you find yourselves subdued, ruined, and degraded. If you looked back, it would be to character destroyed, to hope extinguished. If you looked forward, you could see only the dire necessity you had imposed upon your governors of acting towards you with no feelings but those of abhorrence, and of self-preservation—of ruling you by a system of coercion, of which alone you would be worthy—and of loading you with taxes (that is, selling the food and raiment which your honest labour might earn for your family) to defray the expense of that force, by which only you could be restrained.

Say not, gentlemen, that I am inexcusably
vain

vain when I say, would to God that I had an opportunity of speaking this plain, and I trust, not absurd language to the humblest orders of my countrymen. When I see what sort of missionaries can preach the doctrines of villainy and folly with success, I cannot think it very vain to suppose, that they would listen with some attention and some respect to a man who was addressing plain sense to their minds, whose whole life ought to be a pledge for his sincerity and affection—who had never in a single instance deceived, or deserted, or betrayed them—who had never been seduced to an abandonment of their just rights, or a connivance at any of their excesses, that could threaten any injury to their character.

But perhaps, said Mr. Curran, I have trespassed too much upon your patience by what may appear a digression from the question. The motive of my doing so, I perceive by your indulgent hearing, you perfectly comprehend. But I do not consider what I have said as a mere irrelevant digression with respect to the immediate cause before you. The reasoning comes to this: the present state of this country shews, that nothing could be so stupidly and perversely wicked as a project of separation or of French connexion—and, of course, nothing more improbable than the adoption of such a useless project. If it be then so senseless, and therefore so improbable, how strong ought the evidence be on which you
would

would be warranted in attesting on your oaths, to England and to France, so odious an imputation on the good sense and loyalty of your country. Let me revert again to the evidence which you have heard to support so incredible a charge.—I have already observed on the contemptible smallness of the number—a few drunken peasants assembled in the outlets; there, in the fury of intoxication, they committed such atrocities as no man can be disposed to defend or to extenuate; and having done so, they flee before a few peace-officers, aided by the gallantry of Mr. justice Drury—who, even if he did retreat, as has been insinuated, has at least the merit of having no wish to shed the blood of his fellow-christians, and is certainly intitled to the praise of preserving the life of a most valuable citizen and loyal subject.

In this whole transaction, no attempt, however feeble or ill-directed, is made on any place belonging to or connected with the government. They never even approach the barrack, the castle, the magazines. No leader whatsoever appears; nothing that I can see to call for your verdict, except the finding the bill and the uncorroborated statement of the attorney-general. In that statement, too, I must beg leave to guard you against mistake in one or two particulars:—as to what he said of my lord Kilwarden, it was not unnatural to feel as he seemed to do at the recollection, or to have stated that sad event as
a fact

a fact that took place on that occasion—but I am satisfied, he did not state it with the least intention of agitating your passions, or of letting it have the smallest influence on your judgment in your inquiry into a charge of treason. I must beg leave also to say, that no recital in any statute is any evidence whatsoever of the existence of any particular fact of treason or treasonable conspiracy. I must further desire you to blot completely from your minds the reference which he was pleased to make to the verdict of yesterday.—And in truth, when I see the evidence on which you are to decide reduced to what is legal or admissible, I don't wonder that Mr. Attorney-general himself should have treated this doughty rebellion with the laughter and contempt it deserved.

Where now is this providential escape of the government and the castle? why, simply in this, that nobody attacked either the one or the other; and that there were no persons that could have attacked either. It seems not unlike the escape which a young man had of being shot through the head at the battle of Dettingen, by the providential interference by which he was sent twenty miles off on a foraging party only ten days before the battle.

I wish from my heart that there may be now present some worthy gentleman, who may transmit to Paris a faithful account of what has this
day

day passed. If so, I think some loyal absentee may possibly find an account of it in the *Publiciste* or the *Moniteur*—and perhaps somewhat in this way—“ On the 23d of July last, a most splendid rebellion displayed her standard in the metropolis of Ireland, in a part of the city which in their language is called the *Poddle*. The band of heroes that came forth at the call of patriotism, capable of bearing arms, at the lowest calculation must have amounted to little less than *two hundred* persons. The rebellion advanced with a most intrepid step till she came to the site of the old four courts, and tholsel. There she espied a decayed pillory, on which she mounted, in order to reconnoitre, but she found to her great mortification that the rebels had staid behind. She therefore judged it right to make her escape, which she effected in a masterly manner down *Dirty-lane*. The rebels at the same time retiring in some disorder from the *Poddle*, being hard pressed by the poles and lanterns of the watchmen, and being additionally galled by Mr. justice Drury, who came to a most unerring aim upon their rear, on which he played without any intermission, with a spy-glass from his dining-room window—*Raro antecedentem scelestum deserit Pæna pede claudo*. It is clearly ascertained, that she did not appear in her own clothes, for she threw away her regimental jacket before she fled, which has been picked up, and is now to be seen at Mr. Carleton’s, at sixpence a head for grown persons, and three-pence for a nurse and child.

child. It was thought at first to be the work of an Irish artist, who might have taken measure in the absence of the wearer, but by a bill and receipt found in one of the pockets it appears to have been made by the actual body tailor of her august highness the consort of the first consul. At present it is but poorly ornamented, but it is said that the Irish volunteers have entered into a subscription to *trim* it, if it shall be ever worn again.”—Happy, most happy, is it for these islands, said Mr. Curran, that those rumours which are so maliciously invented and circulated to destroy our confidence in each other, to invite attack and dispirit resistance, turn out on enquiry to be so ludicrous and contemptible, that we cannot speak of them without laughter, or without wonder that they did not rather form the materials of a farce in a puppet-shew, than of a grave prosecution in a court of justice.

Mr. Curran said, there was still another topic material to remind the jury of—this was the first trial for treason that had occurred since the union of these islands. He said no effectual union could be atchieved by the mere letter of statute; do not imagine (said he) that bigotry could blend with liberality, or barbarism with civilization. If you wish to be really united with Great Britain, teach her to respect you, and do so by shewing her that you are fit objects of wholesome laws—by shewing that you are capable of rising to a proud equality with her in the
exercise

exercise of social duties and civil virtues, as many parts of the globe have proved you to be in her fleets and her armies;—shew her that you can try this cause as she would try it; that you have too much sense and humanity to be borne away in your verdict by despicable panic or brutal fury;—shew her that in prosecutions by the state you can even go a step beyond her, and that you can discover and act upon those eternal principles of justice, which it has been found necessary in that country to enforce by the coercion of law: you cannot, said he, but feel that I allude to their statute that requires two witnesses in treason. Our statute does not contain that provision; but if it was wise to enact it there as a law, it cannot be other than wise to adopt it here as a principle; unless you think it discreet to hold it out as your opinion, that the life of man is not so valuable here, and ought not to be so secure, as in the other part of the empire; unless you wish to prove your capability of equal rights and equal liberty with Britain, by consigning to the scaffold your miserable fellow-subject, who, if tried in England on the same charge and the same evidence, would by law be entitled to a verdict of acquittal. I trust you will not so blemish yourselves; I trust you will not be satisfied even with a cold imitation of her justice; but on this occasion you will give her an example of magnanimity by rising superior to the passion or the panic of the moment. If in any ordinary case,

in

in any ordinary time, you have any reasonable doubt of guilt, you are bound by every principle of law and justice to acquit. But I would advise you, at a time like this, rather to be lavish than parsimonious in the application of that principle—even though you had the strongest suspicion of his culpability, I would advise you to acquit—you would shew your confidence in your own strength—that you felt your situation too high to be affected in the smallest degree by the fate of so insignificant an individual; turn to the miserable prisoner himself—tainted and blemished, as he possibly may be—even him you may retrieve to his country and his duty by a salutary effort of seasonable magnanimity. You will inspire him with reverence for that institution, which knows when to spare, as well as when to inflict—and which, instead of sacrificing him to a strong suspicion of his criminality, is determined, not by the belief, but by the possibility of his innocence, and dismisses him with indignation and contemptuous mercy.

Mr. Kirwan was found guilty.

S P E E C H

OF

JOHN PHILPOT CURRAN, Esq.

IN DEFENCE OF

THE REV. CHARLES MASSY

AGAINST

THE MARQUIS OF HEADFORT,

FOR

CRIMINAL CONVERSATION

WITH

PLAINTIFF'S WIFE.

AT ENNIS ASSIZES, Co. CLARE,

ON THE 27th OF JULY, 1804.

Damages laid at £40,000.—Verdict £10,000.

MR. CURRAN.

NEVER so clearly as in the present instance have I observed that safeguard of justice, which providence hath placed in the nature of man. Such is the imperious dominion with which truth and reason wave their sceptre over the human intellect, that no solicitations, however artful, no talent, however commanding, can reduce it from

its allegiance. In proportion to the humility of our submission to its rule do we rise into some faint emulation of that ineffable and presiding divinity, whose characteristic attribute it is—to be coerced and bound by the inexorable laws of its own nature, so as to be *all-wise* and *all-just* from necessity, rather than election. You have seen it in the learned advocate who has preceded me most peculiarly and strikingly illustrated—you have seen *even* his great talents, perhaps the first in any country, languishing under a cause too weak to *carry* him, and too heavy to be *carried* by him. He was forced to dismiss his natural candour and sincerity, and, having no merits in his case, to substitute the dignity of his own manner, the resources of his own ingenuity, over the overwhelming difficulties with which he was surrounded. Wretched client! unhappy advocate! what a combination do you form! But such is the condition of guilt—its commission mean and tremulous—its defence artificial and insincere—its prosecution candid and simple—its condemnation dignified and austere. Such has been the defendant's guilt—such his defence—such shall be my address,—and such, I trust, your verdict. The learned counsel has told you, that this unfortunate woman is not to be estimated at forty thousand pounds—fatal and unquestionable is the truth of this assertion. Alas! gentlemen, she is no longer worth any thing—faded, fallen, degraded, and disgraced, she is worth less than
nothing!

nothing! But it is for the honour, the hope, the expectation, the tenderness, and the comforts that have been blasted by the defendant, and have fled for ever, that you are to remunerate the plaintiff, by the punishment of the defendant. It is not her present value which you are to weigh—but it is her value at that time, when she sat basking in a husband's love, with the blessing of heaven on her head, and its purity in her heart; when she sat amongst her family, and administered the morality of the parental board:—estimate that past value—compare it with its present deplorable diminution—and it may lead you to form some judgment of the severity of the injury, and the requisite extent of the compensation.

The learned counsel has told you, you ought to be cautious, because your verdict cannot be set aside for excess. The assertion is just, but has he treated you fairly by its application? His cause would not allow him to be fair—for, why is the rule adopted in this single action? Because, this being peculiarly an injury to the most susceptible of all human feelings—it leaves the injury of the husband to be ascertained by the sensibility of the jury, and does not presume to measure the justice of their determination by the cold and chilly exercise of his own discretion. In any other action it is easy to calculate. If a tradesman's arm is cut off, you can measure the loss which he has sustained—but the wound

of feeling, and the agony of the heart, cannot be judged by any standard with which I am acquainted. And you are unfairly dealt with, when you are called on to appreciate the present suffering of the husband by the present guilt, delinquency, and degradation of his wife. As well might you, if called on to give compensation to a man for the murder of his dearest friend—find the measure of his injury, by weighing the ashes of the dead. But it is not, gentlemen of the jury, by weighing the ashes of the dead, that you would estimate the loss of the survivor.

The learned counsel has referred you to other cases, and other countries, for instances of moderate verdicts. I can refer you to some authentic instances of just ones. In the next country, £15,000. against a subaltern officer. In Travers and M'Carthy, £5000. against a servant. In Tighe against Jones, £10,000. against a man not worth a shilling. What then ought to be the rule, where rank, and power, and wealth, and station, have combined to render the example of his crime more dangerous—to make his guilt more odious—to make the injury to the plaintiff more grievous, because more conspicuous? I affect no levelling familiarity, when I speak of persons in the higher ranks of society—distinctions of orders are necessary, and I always feel disposed to treat them with respect—but when it is my duty to speak of the crimes by which they are degraded,

degraded, I am not so fastidious as to shrink from their contact, when to touch them is essential to their dissection. In this action, the condition, the conduct, and circumstances of the party, are justly and peculiarly the objects of your consideration. Who are the parties? The plaintiff, young, amiable, of family and education. Of the generous disinterestedness of his heart you can form an opinion even from the evidence of the defendant, that he declined an alliance, which would have added to his fortune and consideration, and which he rejected for an unportioned union with his present wife. She too, at that time young, beautiful and accomplished; and feeling her affection for her husband increase, in proportion as she remembered the ardour of his love, and the sincerity of his sacrifice. Look now to the defendant!—I blush to name him!—I blush to name a rank which he has tarnished—and a patent that he has worse than cancelled. High in the army—high in the state—the hereditary counsellor of the king—of wealth incalculable—and to this last I advert with an indignant and contemptuous satisfaction, because, as the only instrument of his guilt and shame, it will be the means of his punishment, and the source of compensation for his guilt.

But let me call your attention distinctly to the questions you have to consider. The first is the fact of guilt. Is this noble lord guilty? His counsel knew too well how they would have mortified
his

his vanity, had they given the smallest reason to doubt the splendor of his atchievement. Against any such humiliating suspicion he had taken the most studious precaution by the publicity of the exploit. And here, in this court, and before you and in the face of the country, has he the unparalleled effrontery of disdaining to resort even to a *confession of innocence*—His guilt established, your next question is, the damages you should give. You have been told, that the amount of the damages should depend on circumstances. You will consider these circumstances, whether of aggravation or mitigation. His learned counsel contend, that the plaintiff has been the author of his own suffering, and ought to receive no compensation for the ill consequences of his own conduct. In what part of the evidence do you find any foundation for that assertion? He indulged her, it seems, in dress—generous and attached, he probably indulged her in that point beyond his means; and the defendant now impudently calls on you to find an excuse for the adulterer in the fondness and liberality of the husband. But you have been told, that the husband connived. Odious and impudent aggravation of injury—to add calumny to insult, and outrage to dishonour. From whom, but a man hackneyed in the paths of shame and vice—from whom, but from a man having no compunctions in his own breast to restrain him, could you expect such brutal disregard for the feelings of others—from whom, but the cold-blooded

veteran

veteran seducer—from what, but from the exhausted mind—the habitual community with shame—from what, but the habitual contempt of virtue and of man, could you have expected the arrogance, the barbarity, and folly of so foul—because so false an imputation? He should have reflected—and have blushed, before he suffered so vile a topic of defence to have passed his lips. But, ere you condemn, let him have the benefit of the excuse, if the excuse be true. You must have observed how his counsel fluttered and vibrated—between what they called connivance and injudicious confidence; and how, in affecting to distinguish they have confounded them both together.—If the plaintiff has connived, I freely say to you, do not reward the wretch who has prostituted his wife, and surrendered his own honour—do not compensate the pander of his own shame, and the willing instrument of his own infamy. But as there is no sum so low to which such a defence, if true, ought not to reduce your verdict, so neither is any so high to which such a charge ought not to inflame it, if such a charge be false. Where is the single fact in this case on which the remotest suspicion of connivance can be hung?—Odiously has the defendant endeavoured to make the softest and most amiable feelings of the heart the pretext of his slanderous imputations. An ancient and respectable prelate, the husband of his wife's sister, chained down to the bed of sickness, perhaps to the bed of death. In that distressing situation

situation, my client suffered that wife to be the bearer of consolation to the bosom of her sister—he had not the heart to refuse her—and the softness of his nature is now charged on him as a crime. He is now insolently told, that he connived at his dishonour, and that he ought to have foreseen, that the mansion of sickness and of sorrow would have been made the scene of assignation and of guilt. On this charge of connivance I will not farther weary you or exhaust myself—I will add nothing more, than that it is as false as it is impudent—that in the evidence it has not a colour of support; and that by your verdict you should mark it with reprobation. The other subject, namely, that he was indiscreet in his confidence, does, I think, call for some discussion—for I trust you see that I affect not any address to your passions, by which you may be led away from the subject—I presume merely to separate the parts of this affecting case, and to lay them item by item before you, with the coldness of detail, and not with any colouring or display of fiction or of fancy.—Honourable to himself was his unsuspecting confidence, but fatal must we admit it to have been, when we look to the abuse committed upon it; but where was the guilt of this indiscretion? He did admit this noble lord to pass his threshold as his guest. Now the charge which this noble lord builds on this indiscretion is—“thou fool—thou hadst confidence in my honour—and that was a guilty indiscretion—thou simpleton, thou thoughtest

thoughtest that an admitted and cherished guest, would have respected the laws of honour and hospitality, and thy indiscretion was guilt.—Thou thoughtest that he would have shrunk from the meanness and barbarity of requiting kindness with treachery,—and thy indiscretion was guilt.”

Gentlemen, what horrid alternative in the treatment of wives would such reasoning recommend? Are they to be immured by worse than eastern barbarity? Are their principles to be depraved, their passions sublimated, every finer motive of action extinguished by the inevitable consequences of thus treating them like slaves? Or is a liberal and generous confidence in them to be the passport of the adulterer, and the justification of his crimes?

Honourably, but fatally for his own repose, he was neither jealous, suspicious, nor cruel.—He treated the defendant with the confidence of a friend—and his wife with the tenderness of a husband.—He did leave to the noble marquis the physical possibility of committing against him the greatest crime which can be perpetrated against a being of an amiable heart and refined education.—In the middle of the day, at the moment of divine worship, when the miserable husband was on his knees, directing the prayers and thanksgiving of his congregation to their God—that moment did the remorseless adulterer choose to carry off the deluded victim from her husband—from her
child

child—from her character—from her happiness,—as if not content to leave his crime confined to its miserable aggravations, unless he gave it a cast and colour of factitious sacrilege and impiety. Oh! how happy had it been when he arrived at the bank of the river with the ill-fated fugitive, ere yet he had committed her to that boat, of which, like the fabled bark of Styx, the exile was eternal, how happy at that moment, so teeming with misery and with shame, if you, my lord, had met him, and could have accosted him in the character of that good genius which had abandoned him. How impressively might you have pleaded the cause of the father, of the child, of the mother, and even of the worthless defendant himself. You would have said, “is this the requital that you are about to make for respect and kindness, and confidence in your honour? Can you deliberately expose this young man in the bloom of life, with all his hopes before him?—Can you expose him, a wretched outcast from society to the scorn of a merciless world? Can you set him adrift upon the tempestuous ocean of his own passions, at this early season when they are most headstrong; and can you cut him out from the moorings of those domestic obligations by whose cable he might ride at safety from their turbulence? Think of, if you can conceive it, what a powerful influence arises from the sense of home, from the sacred religion of the hearth in quelling the passions, in reclaiming the wanderings, in correcting the discords of the human

man

man heart; do not cruelly take from him the protection of these attachments. But if you have no pity for the father, have mercy at least upon his innocent and helpless child; do not condemn him to an education scandalous or neglected,—do not strike him into that most dreadful of all human conditions, the orphanage that springs not from the grave, that falls not from the hand of Providence, or the stroke of death; but comes before its time, anticipated and inflicted by the remorseless cruelty of parental guilt. For the poor victim herself—not yet immolated—while yet balancing upon the pivot of her destiny, your heart could not be cold, nor your tongue be wordless. You would have said to him, pause,—my lord, while there is yet a moment for reflection. What are your motives, what your views, what your prospects from what you are about to do? You are a married man, the husband of the most amiable and respectable of women, you cannot look to the chance of marrying this wretched fugitive; between you and such an event there are two sepulchres to pass. What are your inducements? Is it love, think you? No,—do not give that name to any attraction you can find in the faded refuse of a violated bed. Love is a noble and generous passion; it can be founded only on a pure and ardent friendship, on an exalted respect, on an implicit confidence in its object. Search your heart, examine your judgment, do you find the semblance of any one of these sentiments to bind
you

you to her? what could degrade a mind to which nature or education had given port or stature or character, into a friendship for her? Could you repose upon her faith? Look in her face, my lord, she is at this moment giving you the violation of the most sacred of human obligations as the pledge of her fidelity.—She is giving you the most irrefragable proof that, as she is deserting her husband for you, so she would without a scruple abandon you for an other. Do you anticipate any pleasure you might feel in the possible event of your becoming the parents of a common child? She is at this moment proving to you that she is as dead to the sense of parental as of conjugal obligation; and that she would abandon your offspring to-morrow, with the same facility with which she now deserts her own. Look then at her conduct, as it is, as the world must behold it, blackened by every aggravation that can make it either odious or contemptible, and unrelieved by a single circumstance of mitigation, that could palliate its guilt, or retrieve it from abhorrence,

Mean, however, and degraded as this woman must be, she will still (if you take her with you) have strong and heavy claims upon you.—The force of such claims does certainly depend upon circumstances; before therefore, you expose her fate to the dreadful risk of your caprice or ingratitude, in merey to her weigh well the confidence she can place in your future justice and honour:

honour: at that future time, much nearer than you think, by what topics can her cause be pleaded to a sated appetite, to a heart that repels her, to a just judgment in which she never could have been valued or respected? Here is not the case of an unmarried woman, with whom a pure and generous friendship may insensibly have ripened into a more serious attachment, until at last her heart became too deeply pledged to be re-assumed: if so circumstanced, without any husband to betray, or child to desert, or motive to restrain, except what related solely to herself, her anxiety for your happiness made her overlook every other consideration, and commit her history to your honour; in such a case, (the strongest and the highest that imagination can suppose); in which you at least could see nothing but the most noble and disinterested sacrifice; in which you could find nothing but what claimed from you the most kind and exalted sentiment of tenderness, and devotion, and respect; and in which the most fastidious rigour would find so much more subject for sympathy than blame:—Let me ask you, could you even in that case, answer for your own justice and gratitude? I do not allude to the long and pitiful catalogue of paltry adventures, in which it seems your time has been employed—The coarse and vulgar succession of casual connexions, joyless, loveless and unendeared: but do you not find upon your memory some trace of an engagement of the character I have sketched?—Has not your sense
of

of what you would owe in such a case, and to such a woman, been at least once put to the test of experiment? Has it not once at least happened that such a woman, with all the resolution of strong faith, flung her youth, her hope, her beauty, her talent, upon your bosom, weighed you against the world, which she found but a feather in the scale, and took you as an equivalent? How did you then acquit yourself? Did you prove yourself worthy of the sacred trust reposed in you? Did your spirit so associate with hers, as to leave her no room to regret the splendid and disinterested sacrifice she had made? Did her soul find a pillow in the tenderness of yours, and support in its firmness? Did you preserve her high in your own consciousness, proud in your admiration and friendship, and happy in your affection? You might have so acted, and the man that was worthy of her would have perished rather than not so act, as to make her delighted with having confided so sacred a trust to his honour—Did you so act? Did she feel that, however precious to your heart, she was still more exalted and honoured in your reverence and respect? Or did she find you coarse and paltry, fluttering and unpurposed, unfeeling, and ungrateful? You found her a fair and blushing flower, its beauty and its fragrance bathed in the dews of heaven. Did you so tenderly transplant it, as to preserve that beauty and fragrance unimpaired? Or did you so rudely cut it, as to interrupt its nutriment, to waste its sweetness, to blast its beauty, to bow down its
faded

faded and sickly head? And did you at last fling it like “a loathsome weed away?” If then to such a woman, so clothed with every title that could ennoble, and exalt, and endear her to the heart of man, you would be cruelly and capriciously deficient, how can a wretched fugitive like this, in every point her contrast, hope to find you just? Send her then away. Send her back to her home, to her child, to her husband, to herself.” Alas, there was no one to hold such language to this noble defendant; he did not hold it to himself. But he paraded his despicable prize in his own carriage, with his own retinue, his own servants—this veteran Paris hawked his enamoured Helen from this western quarter of the island to a sea-port in the eastern, crowned with the acclamations of a senseless and grinning rabble, glorying and delighted, no doubt, in the leering and scoffing admiration of grooms and ostlers, and waiters, as he passed.

In this odious contempt of every personal feeling, of public opinion, of common humanity, did he parade this woman to the sea-port, whence he transported his precious cargo to a country, where her example may be less mischievous than in her own; where I agree with my learned colleague in heartily wishing he may remain with her for ever. We are too poor, too simple, too unadvanced a country, for the example of such achievements. When the relaxation of morals is the

the natural growth and consequence of the great progress of arts and wealth, it is accompanied by a refinement, that makes it less gross and shocking : but for such palliations we are at least a century too young. I advise you, therefore, most earnestly to rebuke this budding mischief, by letting the wholesome vigour and chastisement of a liberal verdict speak what you think of its enormity. In every point of view in which I can look at the subject, I see you are called upon to give a verdict of bold, and just, and indignant, and exemplary compensation. The injury of the plaintiff demands it from your justice ; the delinquency of the defendant provokes it by its enormity. The rank on which he has relied for impunity calls upon you to tell him, that crime does not ascend to the rank of the perpetrator, but the perpetrator sinks from his rank, and descends to the level of his delinquency. The style and mode of his defence is a gross aggravation of his conduct, and a gross insult upon you. Look upon the different subjects of his defence as you ought, and let him profit by them as he deserves ; vainly presumptuous upon his rank he wishes to overawe you by the despicable consideration. He next resorts to a cruel aspersion upon the character of the unhappy plaintiff, whom he had already wounded beyond the possibility of reparation ; he has ventured to charge him with connivance : as to that, I will only say, gentlemen of the jury, do not give this vain boaster

a pretext

a pretext for saying, that if her husband connived in the offence, the jury also connived in the reparation. But he has pressed another curious topic upon you. After the plaintiff had cause to suspect his designs, and the likelihood of their being fatally successful, he did not then act precisely as he ought. Gracious God, what an argument for him to dare to advance ! It is saying this to him : “ I abused your confidence, your hospitality ; I laid a base plan for the seduction of the wife of your bosom ; I succeeded at last, so as to throw in upon you that most dreadful of all suspicions to a man fondly attached, proud of his wife’s honour, and tremblingly alive to his own ; that you were possibly a dupe to the confidence in the wife, as much as in the guest : in this so pitiable distress, which I myself had studiously and deliberately contrived for you, between hope and fear, and doubt and love, and jealousy and shame ; one moment shrinking from the cruelty of your suspicion ; the next, fired with indignation at the facility and credulity of your acquittal ; in this labyrinth of doubt, in this phrensy of suffering, you were not collected and composed ; you did not act as you might have done, if I had not worked you to madness ; and upon that very madness which I have inflicted upon you, upon the very completion of my guilt, and of your misery, I will build my defence. You will not act critically right, and therefore are unworthy of compensation.” Gentlemen, can you be dead to the remorseless atrocity of

such a defence ! And shall not your honest verdict mark it as it deserves ? But let me go a little further ; let me ask you, for I confess I have no distinct idea, what should be the conduct of an husband so placed, and who is to act critically right ? Shall he lock her up, or turn her out, or enlarge or abridge her liberty of acting as she pleases ? Oh, dreadful Areopagus of the tea-table ! how formidable thy inquests, how tremendous thy condemnations ! In the first case he is brutal and barbarous, an odious eastern despot. In the next ; what ! turn an innocent woman out of his house, without evidence or proof, but merely because he is vile and mean enough to suspect the wife of his bosom, and the mother of his child ! Between these extremes, what intermediate degree is he to adopt ? I put this question to you at this moment,—uninfluenced by any passion as you now are, but cool and collected, and uninterested as you must be, do you see clearly this proper and exact line, which the plaintiff should have pursued ? I must question if you do. But if you did or could, must you not say, that he was the last man from whom you should expect the coolness to discover, or the steadiness to pursue it ? And yet this is the outrageous and insolent defence that is put forward to you. My miserable client, when his brain was on fire, and every fiend of hell was let loose upon his heart, he should then, it seems, have placed himself before his mirror, he should have taught the stream of agony to flow decorously down his forehead ;
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he should have composed his features to harmony; he should have writhed with grace, and groaned in melody. But look farther to this noble defendant, and his honourable defence; the wretched woman is to be successively the victim of seduction, and of slander. She, it seems, received marked attentions—here, I confess, I felt myself not a little at a loss. The witnesses could not describe what these marked attentions were, or are. They consisted, not, if you believe the witness that swore to them, in any personal approach, or contact whatsoever—nor in any unwarrantable topics of discourse. Of what materials then were they composed? Why, it seems, a gentleman had the insolence at table to propose to her a glass of wine, and she, oh most abandoned lady! instead of flying like an angry parrot at his head, and besmirching and bescratching him for his insolence, tamely and basely replies, ‘port, sir, if you please.’ But, gentlemen, why do I advert to this folly, this nonsense? Not surely to vindicate from censure the most innocent, and the most delightful intercourse of social kindness, or harmless and cheerful courtesy—“where virtue is, these are most virtuous.” But I am soliciting your attention, and your feeling, to the mean and odious aggravation—to the unblushing and remorseless barbarity, of falsely aspersing the wretched woman he had undone. One good he has done, he has disclosed to you the point in which he can feel; for how imperious must that avarice be, which

could resort to so vile an expedient of frugality? Yes, I will say, that with the common feelings of a man, he would have rather suffered his thirty thousand a year to go as compensation to the plaintiff, than have saved a shilling of it by so vile an expedient of economy. He would rather have starved with her in a goal, he would rather have sunk with her into the ocean, than have so vilified her,—than have so degraded himself. But it seems, gentlemen, and indeed you have been told, that long as the course of his gallantries has been, and he has grown grey in the service, it is the first time he has been called upon for damages—To how many might it have been fortunate, if he had not that impunity to boast? Your verdict will, I trust, put an end to that encouragement to guilt, that is built upon impunity—the devil it seems has saved the noble marquis harmless in the past; but your verdict will tell him the term of that indemnity is expired, that his old friend and banker has no more effects in his hands, and that if he draws any more upon him, he must pay his own bills himself. You will do much good by doing so; you may not enlighten his conscience, nor touch his heart, but his frugality will understand the hint. It will adopt the prudence of age, and deter him from pursuits, in which, though he may be insensible of shame, he will not be regardless of expense. You will do more,—you will not only punish him in his tender point, but you will weaken him in his strong one, his money. We have heard much
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of this noble lord's wealth, and much of his exploits, but not much of his accomplishments or his wit, I know not that his verses have soared even to the poet's corner. I have heard it said, that an ass laden with gold could find his way through the gate of the strongest city. But, gentlemen, lighten the load upon his back, and you will completely curtail the mischievous faculty of a grave animal whose momentum lies, not in his agility, but his weight, not in the quantity of motion, but the quantity of his matter. There is another ground, on which you are called upon to give most liberal damages, and that has been laid by the unfeeling vanity of the defendant. This business has been marked by the most elaborate publicity. It is very clear that he has been allured by the glory of the chace, and not the value of the game. The poor object of his pursuit could be of no value to him, or he could not have so wantonly, and cruelly, and unnecessarily abused her. He might easily have kept this unhappy intercourse an unsuspected secret. Even if he wished for elopement, he might easily have so contrived it, that the place of her retreat would be profoundly undiscoverable; yet, though even the expense, a point so tender to his delicate sensibility, of concealing, could not be one fortieth of the cost of publishing her, his vanity decided him in favour of glory and publicity. By that election he has in fact put forward the Irish nation, and its character, so often and so variously calumniated, upon its trial before the tribunal of the empire; and your verdict will
this

this day decide, whether an Irish jury can feel with justice, and spirit, upon a subject that involves conjugal affection and comfort, domestic honour and repose—the certainty of issue—the weight of public opinion—the gilded and presumptuous criminality of overweening rank and station. I doubt not, but he is at this moment reclined on a silken sofa, anticipating that submissive and modest verdict, by which you will lean gently on his errors; and expecting from your patriotism, no doubt, that you will think again, and again, before you condemn any great portion of the immense revenue of a great absentee, to be detained in the nation that produced it, instead of being transmitted, as it ought, to be expended in the splendour of another country. He is now probably waiting for the arrival of the report of this day, which I understand, a famous note-taker has been sent hither to collect. (Let not the gentleman be disturbed.) Gentleman, let me assure you, it is more, much more the trial of you, than of the noble marquis, of which this imported recorder is at this moment collecting the materials. His noble employer is now expecting a report to the following effect: Such a day came on to be tried at Ennis, by a special jury, the cause of Charles Massy against the most noble, the marquis of Headfort. It appeared, that the plaintiff's wife was young, beautiful, and captivating. The plaintiff himself, a person, fond of this beautiful creature to distraction, and both doating on their child; but the noble marquis approached her,

her, the plume of glory nodded on his head. Not the goddess Minerva, but the goddess Venus had lighted up his casque, "the fire that never tires—such as many a lady gay had been dazzled with before." At the first advance she trembled, at the second she struck to the redoubted son of Mars, and pupil of Venus. The jury saw it was not his fault; (it was an Irish jury) they felt compassion for the tenderness of the mother's heart, and for the warmth of the lover's passion. The jury saw on the one side, a young, entertaining gallant, on the other, a beauteous creature, of charms irresistible. They recollected, that Jupiter had been always successful in his amours, although Vulcan had not always escaped some awkward accidents. The jury was composed of fathers, brothers, husbands—but they had not the vulgar jealousy, that views little things of that sort with rigour, and wishing to assimilate their country in every respect to England not that they are united to it, they, like English gentlemen, returned to their box with a verdict of six-pence damages and six-pence costs." Let this be sent to England. I promise you, your odious secret will not be kept better than that of the wretched Mrs. Massy. There is not a bawdy chronicle in London, in which the epitaph which you would have written on yourselves will not be published, and our enemies will delight in the spectacle of our precocious depravity, in seeing that we can be rotten before we are ripe. I do not suppose it, I do not, cannot, will not believe it;

it; I will not harrow up myself with the anticipated apprehension.

There is another consideration, gentlemen, which I think most imperiously demands even a vindictive award of exemplary damages—and that is the breach of hospitality. To us peculiarly does it belong to avenge the violation of its altar. The hospitality of other countries is a matter of necessity or convention, in savage nations of the first, in polished, of the latter; *but the hospitality of an Irishman* is not the running account of posted and ledgered courtesies, as in other countries;—it springs like all his qualities, his faults, his virtues—directly from his heart. The heart of an Irishman is by nature bold, and he confides; it is tender, and he loves; it is generous, and he gives; it is social, and he is hospitable. This sacrilegious intruder has profaned the religion of that sacred altar so elevated in our worship, so precious to our devotion; and it is our privilege to avenge the crime. You must either pull down the altar, and abolish the worship, or you must preserve its sanctity undebased. There is no alternative between the universal exclusion of all mankind from your threshold, and the most rigorous punishment of him who is admitted and betrays. This defendant has been so trusted, has so betrayed, and you ought to make him a most signal example.

Gentlemen, I am the more disposed to feel
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the strongest indignation and abhorrence at this odious conduct of the defendant, when I consider the deplorable condition to which he has reduced the plaintiff, and perhaps the still more deplorable one that the plaintiff has in prospect before him. What a progress has he to travel through, before he can attain the peace and tranquillity which he has lost? How like the wounds of the body are those of the mind! how burning the fever! how painful the suppuration! how slow, how hesitating, how relapsing the process to convalescence? Through what a variety of suffering, what new scenes and changes, must my unhappy client pass, ere he can re-attain, should he ever re-attain, that health of soul of which he has been despoiled by the cold and deliberate machinations of this practised and gilded seducer? If, instead of drawing upon his incalculable wealth for a scanty retribution, you were to stop the progress of his despicable achievements by reducing him to actual poverty, you could not even so punish him beyond the scope of his offence, nor reprise the plaintiff beyond the measure of his suffering. Let me remind you, that in this action, the law not only empowers you, but that its policy commands you, to consider the public example, as well as the individual injury, when you adjust the amount of your verdict. I confess I am most anxious that you should acquit yourselves worthily upon this important occasion. I am addressing you as fathers, husbands, brothers. I am anxious that

a feeling

a feeling of those high relations should enter into, and give dignity to your verdict. But I confess, I feel a ten-fold solicitude when I remember that I am addressing you as my countrymen, as Irishmen, whose characters as jurors, as gentlemen, must find either honour or degradation in the result of your decision. Small as must be the distributive share of that national estimation, that can belong to so unimportant individual as myself, yet I do own I am tremblingly solicitous for his fate. Perhaps it appears of more value to me, because it is embarked on the same bottom with yours ; perhaps the community of peril, of common safety, or common wreck, gives a consequence to my share of the risk, which I could not be vain enough to give it, if it were not raised to it by that mutuality. But why stoop to think at all of myself, when I know that you, gentlemen of the jury, when I know that our country itself are my clients on this day, and must abide the alternative of honour, or of infamy, as you shall decide. But I will not despond, I will not dare to despond. I have every trust, and hope, and confidence in you. And to that hope I will add my most fervent prayer to the God of all truth and justice, that you may so decide, as to preserve to yourselves while you live, the most delightful of all recollections, that of acting justly, and to transmit to your children the most precious of all inheritances, the memory of your virtue.

SPEECH

S P E E C H
OF
JOHN PHILPOT CURRAN, Esq.
IN THE CAUSE OF THE KING
AGAINST THE
HON. MR. JUSTICE JOHNSON,
IN THE
COURT OF EXCHEQUER,
DUBLIN, FEBRUARY 4, 1805

An act of Parliament was passed in England in the year 1804, and received the royal assent on the 20th July that year, which was entitled, an act to render more easy the apprehending and bringing to trial, offenders escaping from one part of the united kingdom to the other, and also from one country to another.

The fourth section, on the construction of which the argument in the court of exchequer arose, is as follows :

And, for the remedy of the like inconveniency by the escape into *Ireland* of persons guilty of crimes in *England* or *Scotland* respectively, be it further enacted, that, from and after the 1st day of *August*, 1804, if any person or persons, against whom a warrant shall be issued by any of the judges of his majesty's court of king's-bench, or of the courts of great sessions in *Wales*, or any justice of oyer and terminer or gaol delivery, or any justice or justices of the peace of any county, stewartry, riding, division, city, liberty, town, or place, within *England* or *Scotland* respectively, or other persons having authority to issue the same within *England* or *Scotland* respectively, for any crime or offence against the laws of *England* or *Scotland* respectively, shall escape, go into, reside, or be in any place of that part of the

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the united kingdom called *Ireland*, it shall and may be lawful for any justice of the peace of the county or place in *Ireland*, whither or where such person or persons shall escape, go into, or reside, or be, to indorse his name on such warrant, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriff's-officers, constables, and other peace-officers, of the county or place in *Ireland* where such warrant shall be so indorsed, to execute the said warrant in the county or place in *Ireland* where it is so indorsed, by apprehending the person or persons against whom such warrant may be granted, and to convey him, her, or them by the most direct way, into *England* or *Scotland* respectively, and before one of the justices of peace of the county or stewartry, in *England* or *Scotland* respectively, living near the place and in the county where he, she, or they shall arrive and land, which justice of peace is hereby authorized and required to proceed with regard to such person or persons as if such person or persons had been legally apprehended in the said county or stewartry of *England* or *Scotland* respectively.

MR. CURRAN

MY LORDS,

IT has fallen to my lot, either fortunately, or unfortunately, as the event may be, to rise as counsel for my client on this important and momentous occasion. I appear before you, my lords, in consequence of a writ issued by his *majesty*, commanding that cause be shewn to this his *court* why his *subject* has been deprived of his *liberty*; and upon the cause shewn in obedience to this writ, it

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is my duty to address you on the most awful question, if awfulness is to be judged by consequences and events, on which you have been *ever* called upon to decide. Sorry am I that the task has not been confided to more adequate powers ; but, feeble as they are, they will at least not shrink from it. I move you therefore that Mr. justice Johnson be released from illegal imprisonment.

I cannot but observe the sort of scenic preparation with which this sad drama is sought to be brought forward. In part I approve it ; in part it excites my *disgust* and *indignation*. I am glad to find that the attorney and solicitor-general, the natural and official prosecutors for the state, do not appear ; and I infer from their absence, that his excellency the lord lieutenant disclaims any personal concern in this execrable transaction. I think it does him much honour ; it is a conduct that equally agrees with the dignity of his character and the feelings of his heart. To his private virtues, whenever he is left to their influence, I willingly concur in giving the most unqualified tribute of respect. And I do firmly believe, it is with no small regret that he suffers his name to be even formally made use of, in avowing for a return of one of the judges of the land, with as much indifference and *nonchalance* as if he were a beast of the plough. I observe too, the dead silence into which the public is frowned by authority for the sad occasion. No man dares to mutter ; no newspaper dares to whisper that such

a question

a question is afloat. It seems an enquiry among the tombs, or rather in the shades beyond them.

Ibant solâ sub nocte per umbram.

I am glad it is so—I am glad of this factitious dumbness; for if murmurs dared to become audible, my voice would be too feeble to drown them; but when all is hushed—when nature sleeps—

Cum quies mortalibus ægris,

the weakest voice is heard—the shepherd's whistle shoots across the listening darkness of the interminable heath, and gives notice that the wolf is upon his walk, and the same gloom and stillness that tempt the monster to come abroad, facilitate the communication of the warning to beware. Yes, through that silence the voice shall be heard; yes, through that silence the shepherd shall be put upon his guard; yes, through that silence shall the felon savage be chased into the toil. Yes, my lords, I feel myself cheered and impressed by the composed and dignified attention with which I see you are disposed to hear me on the most important question that has ever been subjected to your consideration; the most important to the dearest rights of the human being; the most deeply interesting and animating that can beat in his heart, or burn upon his tongue—Oh! how recreating is it to feel that occasions may arise in which the soul of man may resume her pretensions; in which she hears the voice of nature whisper to her, *os homini sublime dedi cælumque tueri*; in which even I can look up
with

with calm security to the court, and down with the most profound contempt upon the reptile I mean to tread upon! I say, reptile; because, when the proudest man in society becomes so much the dupe of his childish malice, as to wish to inflict on the object of his vengeance the poison of his sting, to do a reptile's work he must shrink into a reptile's dimension; and so shrunk, the only way to assail him is to tread upon him. But to the subject:—this writ of habeas corpus has had a return. That return states, that lord Ellenborough chief justice of England, issued a warrant reciting the foundation of this dismal transaction: that *one* of the clerks of the crown-office had certified to him, that an indictment had been found at Westminster, charging the honourable Robert Johnson, late of Westminster, one of the justices of his majesty's court of common-pleas in Ireland, with the publication of certain slanderous libels against the government of that country; against the person of his excellency lord Hardwicke, lord lieutenant of that country; against the person of lord Redesdale, the chancellor of Ireland, and against the person of Mr. justice Osborne, one of the justices of the court of king's-bench in Ireland. One of the clerks of the crown-office, it seems, certified all this to his lordship. How many of those there are, or who they are, or which of them so certified, we cannot presume to guess, because the learned and noble lord is silent as to those circumstances. We are only informed that one of them made that
important

important communication to his lordship. It puts me in mind of the information given to one of Fielding's justices: "did not," says his worship's wife, "the man with the valet make his *fidavy* that you was *avagram*?" I suppose it was some such petty-bag officer who gave lord Ellenborough to understand that Mr. justice Johnson was indicted. And being thus given to understand and be informed, he issued his warrant to a gentleman, no doubt of great respectability, a Mr. Williams, his tipstaff, to take the body of Mr. justice Johnson and bring him before a magistrate, for the purpose of giving bail to appear within the first eight days of this term, so that there might be a trial within the sittings after; and if, by the blessing of God, he should be convicted, then to appear on the return of the *posted*, to be dealt with according to law.

Perhaps it may be a question for you to decide, whether that warrant, such as it may be, is not now absolutely spent; and, if not, how a man can contrive to be hereafter in England on a day that is past? And high as the opinion may be in England of Irish understanding, it will be something beyond even Irish exactness to bind him to appear in England, not a fortnight hence, but a fortnight ago.—I wish, my lords, we had the heart of giving time this retrograde motion. If possessed of the secret, we might be disposed to improve it from fortnights into years.

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There is something not incurious in the juxtaposition of signatures. The warrant is signed by the chief-justice of all England.—In music, the ear is reconciled to strong transitions of key by a preparatory resolution of the intervening discords; but here, alas! there is nothing to break the fall: the august title of Ellenborough is followed by the unadorned name of brother Bell, the sponsor of his lordship's warrant. Let me not, however, be suffered to deem lightly of the compeer of the noble and learned lord. Mr. justice Bell ought to be a lawyer; I remember him myself long a crier* to, and I know his credit with, the state; he has had a *noli prosequi*. I see not therefore why it may not be fairly said “*fortunati ambo!*” It appears by his return, that Mr. justice Bell indorses this bill of lading to another consignee, Mr. Medlicot, a most respectable gentleman; he describes himself upon the warrant, and he gives a delightful specimen of the administration of justice, and the calendar of saints in office; he describes himself a justice and a peace-officer—that is, a magistrate and a catchpole:—So that he may receive informations as a justice; if he can write, he may draw them as a clerk; if not, he can execute the warrant as bailiff; and, if it be a capital offence, you may see the culprit, the justice, the clerk, the bailiff, and the hangman, together

* This gentleman was formerly crier to the late baron Hamilton, when the baron went circuit as a judge.

in the same cart ; and, though he may not write, he may “ ride and tie !” What a pity that their journey should not be further continued together ! That, as they had been “ lovely in their lives, so in their deaths they might not be divided !” I find, my lords, I have undesignedly raised a laugh ; never did I less feel merriment.—Let not me be condemned—let not the laugh be mistaken.—Never was Mr. Hume more just than when he says, that “ in many things the extremes are nearer to one another than the means.”—Few are those events that are produced by vice and folly, that fire the heart with indignation, that do not also shake the sides with laughter. So when the two famous moralists of old beheld the sad spectacle of life, the one burst into laughter, the other melted into tears : they were each of them right, and equally right.

Si credas utrique

Res sunt humanæ flebile ludibrium.

But these laughs are the bitter ireful laughs of honest indignation,—or they are the laughs of hectic melancholy despair.

It is stated to you, my lords, that these two justices, if justices they are to be called, went to the house of the defendant. I am speaking to judges, but I disdain the paltry insult it would be to them, were I to appeal to any wretched sympathy of situation. I feel I am above it. I know the bench is above it. But I know, too, that there are ranks, and degrees, and decorums to be
observed ;

observed ; and, if I had a harsh communication to make to a venerable judge, and a similar one to his crier, I should certainly address them in a very different language indeed. A judge of the land, a man not young, of infirm health, has the sanctuary of his habitation broken open by these two persons, who set out with him for the coast, to drag him from his country, to hurry him to a strange land by the “most direct way !” till the king’s writ stopt the malefactors, and left the subject of the king a waif dropt in the pursuit.

Is it for nothing, my lords, I say this ? Is it without intention I state the facts in this way ? It is with every intention. It is the duty of the public advocate not so to put forward the object of public attention, as that the skeleton only shall appear, without flesh, or feature, or complexion. I mean every thing that ought to be meant in a court of justice. I mean not only that this execrable attempt shall be intelligible to the court as a matter of *law*, but shall be understood by the world as an act of *state*. If advocates had always the honesty and the courage, upon occasions like this, to despise all personal considerations, and to think of no consequence but what may result to the public from the faithful discharge of their sacred trust, these phrenetic projects of power, these atrocious aggressions on the liberty and happiness of men, would not be so often attempted ; for, though a certain class of delinquents may be

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screened from punishment, they cannot be protected from hatred and derision. The great tribunal of reputation will pass its inexorable sentence upon their crimes, their follies, or their incompetency ; they will sink themselves under the consciousness of their situation ; they will feel the operation of an acid so neutralizing the malignity of their natures, as to make them at least harmless, if it cannot make them honest. Nor is there any thing of risk in the conduct I recommend. If the fire be hot, or the window cold, turn your back to neither ; turn your face. So, if you are obliged to arraign the acts of those in high station, approach them not in malice, nor favour, nor fear. Remember, that it is the condition of guilt to tremble, and of honesty to be bold ; remember, that your false fear can only give them false courage :—that while you nobly avow the cause of truth, you will find her shield an impenetrable protection ; and that no attack can be either hazardous or inefficient, if it be just and resolute.—If Nathan had not fortified himself in the boldness and directness of his charge, he might have been hanged for the malice of his parable.

It is, my lords, in this temper of mind, befitting every advocate who is worthy of the name, deeply and modestly sensible of his duty, and proud of his privilege, equally exalted above the meanness of temporizing or of offending, most averse from the unnecessary infliction
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of pain upon any man or men whatsoever, that I now address you on a question, the most vitally connected with the liberty and well-being of every man within the limits of the British empire ; which being decided one way, he may be a freeman ; which being decided the other, he must be a slave. It is not the Irish nation only that is involved in this question : every member of the three realms is equally embarked ; and would to God all England could listen to what passes here this day ! they would regard us with more sympathy and respect, when the proudest Briton saw that his liberty was defended in what he would call a provincial court, and by a provincial advocate. The abstract and general question for your consideration is this :—my lord Ellenborough has signed with his own hand a warrant, which has been indorsed by Mr. Bell, an Irish justice, for seizing the person of Mr. justice Johnson in Ireland for conveying his person by the most direct way, in such manner as these bailiffs may choose, across the sea, and afterwards to the city of Westminster, to take his trial for an alleged libel against the persons entrusted with the government of Ireland, and to take that trial in a country where the supposed offender did not live at the time of the supposed offence, nor since a period of at least eighteen months previous thereto, has ever resided ; where the subject of his accusation is perfectly unknown ; where the conduct of his prosecutors, which has been the subject of the supposed libel, is equally unknown ;

unknown ; where he has not the power of compelling the attendance of a single witness for his defence. Under that warrant he has been dragged from his family ; under that warrant he was on his way to the water's edge : his transportation has been interrupted by the writ before you, and upon the return of that writ arises the question upon which you are to decide, the legality or illegality of so transporting him for the purpose of trial. I am well aware, my lords, of the limits of the present discussion ; if the law were clear in favour of the prosecutors, a most momentous question might arise—how far they may be delinquents in daring to avail themselves of such a law for such a purpose?—but I am aware that such is not the present question. I am aware that this is no court of impeachment ; and therefore that your enquiry is, not whether such a power hath been criminally used, but whether it doth in fact exist. The arrest of the defendant has been justified by the advocates of the crown under the forty-fourth of his present majesty. I have had the curiosity to enquire into the history of that act, and I find, that in the month of May, 1804, the brother-in-law of one of the present prosecutors obtained leave to bring in a bill to “ render more easy the apprehending and bringing to trial offenders escaping from one part of the united kingdom to another, and also from one county to another :” that bill was brought in ; it travelled in the caravan of legislation unheeded and unnoticed, retarded

tarded by no difficulties of discussion or debate, and in due fulness of season it passed into a law, which was to commence from and after the 1st of August, 1804. This act, like a young Hercules, began its exploits in the cradle. In the November following the present warrant was issued, under its supposed authority. Let me not be understood to say that the act has been slided through an unsuspecting legislature, under any particular influence, or for any particular purpose: that any such man could be found, or any such influence exist, or any such lethargy prevail, would not, perhaps, be decent to suppose; still less do I question the legislative authority of parliament. We all know that a parliament may attainit itself; and that its omnipotence may equally extend in the same way to the whole body of the people. We know also that most unjust and cruel acts of attainder have been obtained by corrupt men in bad times; and if I could bring myself to say, which I do not, that this act was contrived for the mere purpose of destroying an obnoxious individual, I should not hesitate to call it the most odious species of attainder that could be found upon the records of legislative degradation; because, for the simple purpose of extinguishing an individual, it would sweep the liberty of every being in the state into the vortex of general and undistinguished destruction. But these are points of view upon which the minds of the people of Ireland and England may dwell with terror, or indignation,

indignation, or apathy, according as they may be fitted for liberty or for chains ; but they are not points for the court ; and so I pass them by. The present arrest and detention are defended under the forty-fourth of the king : are they warranted by that act ? That is the only question for you to decide ; and you will arrive at that decision in the usual course, by enquiring, first, how the law stood before upon the subject ; next, what the imperfection or grievance of that law was ; and thirdly what is the remedy intended to be applied by the act in question ?

First, then, how stood the law before?—upon this part it would be a parade of useless learning to go farther back than the statute of Charles, the *Hábeas Corpus* act, which is so justly called the second magna charta of British liberty: what was the occasion of the law? the arbitrary transportation of the subject beyond the realm ; that base and malignant war, which the odious and despicable minions of power are for ever ready to wage against all those who are honest and bold enough to despise, to expose, and to resist them. Such is the oscitancy of man, that he lies torpid for ages under these aggressions, until at last some signal abuse, the violation of Lucrece, the death of Virginia, the oppression of William Tell, shake him from his slumber. For years had those drunken gambols of power been played in England ; for years had the waters of bitterness been rising to the brim ; at last a single drop caused them

them to overflow—and what does that great statute do? It defines and asserts the right, it points out the abuse, and it endeavours to secure the right, and to guard against the abuse, by giving redress to the sufferer, and by punishing the offender. For years had it been the practice to transport obnoxious persons out of the realm into distant parts under the pretext of punishment, or of safe custody. Well might they have said to be sent “to that undiscovered country from whose bourne no traveller returns,” for of these wretched travellers how few ever did return? But of that flagrant abuse this statute has laid the axe to the root: it prohibits the abuse; it declares such detention or removal illegal; it gives an action against all persons concerned in the offence, by contriving, writing, signing, countersigning, such warrant, or advising or assisting therein. That you may form a just estimate of the rights which were to be secured, examine the means by which the infringement was in future to be prevented and punished. The injured party has a civil action against the offenders; but the legislature recollected, that the sneaking unprincipled humility of a servile packed jury might do homage to ministerial power by compensating the individual with nominal damages. The statute does that, of which I remember no other instance. It leaves the jury at liberty to give damages to any extent, above five hundred pounds, but expressly forbids them to find a verdict of damages below it.

Was

Was this sufficient?—No.—The offenders incur a *præmunire*. They are put out of the king's protection; they forfeit their lands and goods; they are disabled from bearing any office of trust or profit. Did the statute stop there? The legislative saw in their prospective wisdom, that the profligate favourite who had committed treason against the king by the oppression of his subjects, might acquire such a dominion over the mind of his master, as by the exertion of prerogative to interrupt the course of justice, and prevent the punishment of his crime.—The king cannot pardon.—Are bulwarks like these ever constructed to repel the incursions of a contemptible enemy? Was it a trivial and ordinary occasion which raised this storm of indignation in the parliament of that day? Is the ocean ever lashed by the tempest to waft a feather or to drown a fly? Thus, haughtily and jealously, does this statute restrain the abuses that may be committed against the liberty of the subject by the judge, the jury, or the minister. One exception, and one exception only does it contain:—It excepts from its protection by the sixteenth section, persons who may have committed any “capital offence” in Scotland or Ireland. If the principle of that exception were now open to discussion, sure I am that much might be said against its policy. On the one side, you would have to consider the mischief of letting this statute protect a capital offender from punishment, by prohibiting his transmission to that jurisdiction

jurisdiction where his crime was committed, and where alone he could be tried. On the other, you would have to weigh the danger to be feared from the abuse of such a power, which as the habeas corpus act stood, could not be resorted to in any ordinary way; but was confined to the soul and exclusive exercise of the advisers of the prerogative. You would have to consider whether it was more likely that it would be used against the guilty or the obnoxious; whether it was more likely to be used as an instrument of justice against the bad, or a pretext of oppression against the good; and finally, whether you might not apply to the subject the humane maxim of our law—that better it is that one hundred guilty men should escape, than that one innocent, and, let me add, meritorious man, should suffer. But our ancestors have considered the question; they have decided; and, until we are better satisfied than I fear we can be, that we have not degenerated from their virtue, it can scarcely become us to pass any light or hasty condemnation upon their wisdom. In this great statute, then my lords, you have the line of demarcation between the prerogative and the people, as well as between the criminal law and the subject, defined with all the exactness, and guarded by every precaution that human prudence could devise. Wretched must that legislature be, whose acts you cannot trace to the first unchangeable principles of rational prerogative, of civil liberty, of equal justice! In this act you trace them all distinctly.

By

By this act you have a solemn legislative declaration, “that it is incompatible with liberty to “send any subject out of the realm, and under pretence of any crime supposed or alleged to be “committed in a foreign jurisdiction, except that “crime be capital.” Such were the bulwarks which our ancestors drew about the sacred temple of liberty—such the ramparts by which they sought to bar out the ever-toiling ocean of arbitrary power; and thought, (generous credulity!) that they had barred it out from their posterity for ever. Little did they foresee the future race of vermin that would work their way through those mounds, and let back the inundation; little did they foresee that their labours were so like those frail and transient works that threatened for a while the haughty crimes and battlements of Troy but so soon vanished before the force of the trident and the impulse of the waters; or that they were still more like the forms which the infant’s finger traces upon the beach; the next breeze, the next tide erases them, and confounds them with the barren undistinguished strand. The ill-omened bird that lights upon it sees nothing to mark, to allure, or to deter, but finds all one obliterated unwaried waste;

Et sola secum sicca spatiaturs arena.

Still do I hope that this sacred bequest of our ancestors will have a more prosperous fortune, and be preserved by a more religious and successful care, a polar star to the wisdom of the legislator, and the integrity of the judge.

As

As such will I suppose its principle not yet brought into disgrace; and as such, with your permission, will I still presume to argue upon that principle.

So stood the law till the two acts of the twenty-third and twenty-fourth of George II. which relate wholly to cases between county and county in England. Next followed the act of the thirteenth of his present majesty, which was merely a regulation between England and Scotland. And next came the act of the forty-fourth of the present reign, upon which you are now called on to decide, which as between county and county is an incorporation of the two acts of George II: and as between England, Scotland, and Ireland is nearly a transcript of the thirteenth of the king.

Under the third and fourth section of this last act the learned counsel for the learned prosecutors (for really I think it candid to acquit the lord lieutenant of the folly or the shame of this business, and to suppose that he is as innocent of the project from his temper, as he must from his education be ignorant of the subject) endeavour to justify this proceeding. The construction of this act they broadly and expressly contend to be this:—first, they assert that it extends not only to the higher crimes, but to all offences whatsoever: secondly, that it extends not only to persons who may have committed offences within any given jurisdictions, and afterwards escaped or gone out of such jurisdictions, but to all persons

sons whether so escaping or going out or not :—thirdly, that it extends to constructive offences, that is, to offences committed against the laws of certain jurisdictions, committed in places not within them, by persons that never put their feet within them, but by construction of law committing them within such jurisdiction, and of course triable therein:—fourthly, that it extends peculiarly to the case of libels against the persons entrusted with the powers of government or with offices in the state—and fifthly, that it extends not only to offences committed after the commencement of the act, but also to offences at any period however remotely previous to the existence of the statute; that is, that it is to have an *ex post facto* operation. The learned prosecutors have been forced into the necessity of supporting these last monstrous positions, because upon the return to the writ, and upon the affidavits it appears, and has been expressly admitted in the argument:—first, that the supposed libel upon these noble and learned prosecutors relates to the unhappy circumstances that took place in Ireland on the twenty-third of July, 1803, and of course must have been published subsequent thereto:—and secondly, that Mr. justice Johnson from the beginning of 1802 to the present hour was never for a moment in England but was constantly resident in Ireland; so that his guilt, whatever it be, must arise from some act of necessity, committed in Ireland, and by no physical possibility committed or capable of being committed in England: these are the positions upon which a learned chancellor

lor and a learned judge come forward to support their cause and to stake their character, each in the face of his country, and both in the face of the British empire: these are the positions, which, thank God, it belongs to my nature to abhor, and to my education to despise, and which it is this day my most prompt and melancholy duty to refute and to resist—most prompt in obeying; most grieved at the occasion that calls for such obedience.

We must now examine this act of the forty-fourth of the king, and in doing so I trust you will seek some nobler assistance than can be found in the principles or the practice, of day-rules or sidebar motions; something more worthy a liberal and learned court, acting under a religious sense of their duty to their king, their country, and their God, than the feeble and pedantic aid of a stunted verbal interpretation, straining upon its tip-toe to peep over the syllable that stands between it and meaning. If your object was merely to see if its words could be tortured into a submission to a vindictive interpretation, you would have only to indorse the construction that these learned prosecutors have put upon it, and that with as much grave deliberation as Mr. justice Bell has vouchsafed to endorse the warrant which my lord Ellenborough has thought fit to issue under its authority. You would then have only to look at it, *ut leguleius quidam cautus atque actus, præcentor.*

Lord

Lord Avonmore. No, Mr. Curran, you forget; it is not *præcentor*, it is *leguleius quidam cautus atque acutus, præco actionum, cantor formarum, auceps syllabarum*.

Mr. Curran. I thank you, my lord, for the assistance; and I am the more grateful, because, when I consider the laudable and successful efforts that have been made of late to make science domestic and familiar, and to emancipate her from the trammels of scholarship, as well as the just suspicion under which the harbourers and abettors of those outlawed classics have fallen, I see at what a risk you have ventured to help me out. And yet see, my lord, if you are prudent in trusting yourself to the honour of an accomplice. Think, should I be prosecuted for this misprision of learning, if I could resist the temptation of escaping by turning evidence against so notorious a delinquent as you, my good lord, and so confessedly more criminal than myself, or perhaps than any other man in the empire*.

To examine this act then, my lords, we must revert to the three English statutes of which it is a transcript. The first of these is the twenty-third of George II. cap. 26. sect. 11.

So much of the title as relates to our present enquiry is “for the apprehending of persons in any

* Lord Avonmore may be justly ranked amongst the first classical scholars in either Ireland or England. They who know him, know this.

“ county or place upon warrants granted by justices of the peace in any other county or place.”

See now sect. 11, that contains the preamble and enactment as to this subject :—

“ And whereas it frequently happens that persons, against whom warrants are granted by justices of the peace for the several counties within this kingdom, escape into other counties or places out of the jurisdiction of the justices of the peace granting such warrants, and thereby avoid being punished for the offences whereof they are charged: For remedy whereof, be it enacted by the authority aforesaid, that from and after the twenty-fourth day of June, one thousand seven hundred and fifty, in case any person against whom a legal warrant shall be issued by any justice or justices of the peace for any county, riding, division, city, liberty, town or place within this kingdom, shall escape or go into any other county, riding, division, city, liberty, town or place out of the jurisdiction of the justice or justices granting such warrant as aforesaid, it shall and may be lawful for any justice of the peace of the county, riding, division, city, liberty, town, or place, to which such person shall have gone or escaped, to endorse such warrant, upon application made to him for that purpose, and to cause the person against whom the same shall have been issued to be apprehended and sent

“ to the justice or justices who granted such war-
 “ rant, or some other justice or justices of the
 “ county, riding division, city, liberty, town or
 “ place, from whence such person shall have
 “ gone or escaped, to the end that he or she may
 “ be dealt with according to law, any law or
 “ usage to the contrary notwithstanding.”

This act was amended by the twenty-fourth of the same reign, the title of which was, “ An act
 “ for amending and making more effectual a
 “ clause in an act passed in the last session of
 “ parliament for the apprehending of persons in
 “ any county or place upon warrants granted by
 “ justices of the peace of any county or place.”

It then recites the 11th section of the twenty-third of George II. and proceeds, “ And whereas
 “ such offender or offenders may reside or be in
 “ some other county, riding, division, city, liber-
 “ ty, town, or place, out of the jurisdictions of
 “ the justice or justices granting such warrant,
 “ as aforesaid, before the granting such warrant,
 “ and without escaping or going out of the coun-
 “ ty, riding, division, city, liberty, town or place
 “ after such warrant granted.”

I shall reserve a more particular examination of these two acts for that head of my argument that shall necessarily require it. At present I shall only observe: first, that they are manifestly prospective; secondly, that they operate only as between county and county in England; thirdly,
 that

that they clearly and distinctly go to all offenders whatsoever, who may avoid trial and punishment of their offences by escaping from the jurisdiction in which they were committed, and were of course triable and punishable; and fourthly, that provision is made for bailing the persons so arrested in the place where taken, if the offences charged upon them were bailable by law.

In the thirteenth of his present majesty it was thought fit to make a law with respect to criminals escaping from England to Scotland, and *vice versa*: of that act the present statute of the forty-fourth is a transcript. And upon this statute arises the first question made by the prosecutors; namely, whether, like the acts of the twenty-third and twenty-fourth of George II. which were merely between county and county, it extended indiscriminately to the lowest as well as the highest offences? or whether the thirteenth and forty-fourth, which go to kingdom and kingdom, are not confined to some and to what particular species of offences? the preamble to these two statutes so far as they bear upon our present question is contained in the third section of the forty-fourth, the act now under consideration. And there is not a word in it that is not most material. It says, “Whereas, it may frequently happen that felons and other malefactors in Ireland may make their escape into Great Britain, and also that felons and other malefactors in Great Britain may make their

2 F 2

escape

“ escape into Ireland, whereby their crimes remain unpunished.” There being no sufficient provision by the laws now in force in Great Britain and Ireland respectively for apprehending such offenders and transmitting them into that part of the united kingdom in which their offences were committed. For remedy whereof, &c. and if any person against whom a warrant shall be issued by any justice of the peace in Ireland for any crime or offence against the laws of Ireland shall escape, go into, reside, or be in any place in England or Scotland, it shall be lawful for any justice of the peace for the place, whither or where such persons shall escape, &c. to endorse his name on such warrant; which warrant so endorsed shall be a sufficient authority to the person bringing it to execute the same by apprehending the person against whom it is granted, and to convey him by the most direct way into Ireland and before a justice living near the place where he shall land, which justice shall proceed with regard to him as if he had been legally apprehended in such county of Ireland. The 4th section makes the same provision for escapes from England or Scotland into Ireland. The statute goes on and directs that the expenses of such removal shall be repaid to the person defraying the same by the treasurer of the county in which the crime was committed, and the treasurer is to be allowed for it in his accounts.

To support the construction that takes in all possible

possible offences of all possible degrees, you have been told, and upon the grave authority of notable cases, that the enacting part of a statute may go beyond its preamble; that it cannot be restrained by the preamble, and still less by the title; that here the enacting clause was the words “any offence,” and that “any offence” must extend to every offence, and of course to the offence in question. If the question had been of the lighter kind, you might perhaps have smiled at the parade of authorities produced to establish what no lawyer ever thinks of denying. They would have acted with more advantage to the justice of the country, though perhaps not to the wishes of their clients, if they had not reminded your lordships, that in the construction of statutes, the preamble and even the title itself may give some assistance to the judge in developing its meaning and its extent; if they had reminded you, that remedial laws are to be construed liberally, and penal laws with the utmost strictness and caution. And when they contend that a supposed libel is within the letter of this law, they would have done well to have added, that it is a maxim that there may be cases within the letter of a statute, which, notwithstanding, the judge is bound to reject from its operation as being incompatible with its spirit. They would have done well in adding, that the judge is bound so to construe all laws as not to infringe upon any of the known rules of religion or morality—any of the known rules of distributive justice—any of the established

established principles of the liberties and rights of the subject—and that it is no more than a decent and becoming deference to the legislator to assume as certain, that whatever words he may have used, he could not possibly have meant any thing that upon the face of it was palpably absurd, immoral, or unjust. These are the principles on which I am persuaded this court will always act, because I know them to be the principles on which every court of justice ought to act. And I abstain studiously from appealing to any judicial decisions in support of them, because to fortify them by precedent or authority would be to suppose them liable to be called in question. There is another rule which I can easily excuse the learned gentleman from adverting to, and that is, that when many statutes are made in *pari materiâ*, any one of them is to be construed, not independently of the others, but with a reference to the entire code of which it is only a component part.

On these grounds then, I say, the forty-fourth was not, and could not be intended to go to all offences whatsoever.

First because the acts of twenty-third, and twenty-fourth of George II. had already described “all persons” by words of the most general and comprehensive kind. If the framers of the thirteenth and forty-fourth meant to carry these acts to the same length, they had the words of the former

mer acts before their eyes, and yet they have used very different words: a clear proof, in my mind, that they meant to convey a very different meaning. In these latter acts they use very singular words—"felons and other malefactors;"—that these words are somewhat loose and indefinite I make no difficulty of admitting: but will any man that understands English deny, that they describe offences of a higher and most enormous degree? You are told, that felon does not necessarily mean a capital offender, because there are felonies not capital, the name being derived from the forfeiture not of life, but of property. You are also told, that malefactor means generally an ill-doer, and, in that sense, that every offender is a malefactor; but the thirteenth and forty-fourth states this class to be felons and malefactors, for whose transmission from kingdom to kingdom "no sufficient provision was made by the laws now in force." Now I think it is not unfair reasoning to say, that this act extends to a class of offenders whose transmission was admitted to be not incompatible with the just liberty of the subject of England; but for whose transmission the legislature could not say there was *no* provision; but for whose transmission it was clear that there was not a sufficient provision, though there was some provision. If you can find any class so circumstanced, that is exclusively liable by law to be so transmitted, the meaning of the words "felons and other malefactors," becomes fixed, and must necessarily refer to such class.

Now

Now that class is expressly described in the habeas corpus act, because it declares the transmission of all persons to be illegal, except only persons charged with capital crimes; for their apprehension and transmission there was a provision, the *mandatum regis*; that is, the discretionary exercise of the prerogative. That power had therefore been used in cases of treason, as in Lundy's case: so in the case of lord Sanchar; Carliel, the principal in the murder of Turner, committed in London by the procurement of lord Sanchar, was arrested in Scotland whither he had fled, by the order of king James I. and brought back to England, where he was executed for the crime, as was lord Sanchar, the accessory before the fact; but such interference of the prerogative might be granted or withheld at pleasure, could be applied for only with great difficulty and expense, and therefore might well be called an insufficient provision. No provision for such a purpose can be sufficient, unless, instead of depending on the caprice of men in power, it cannot be resorted to in the ordinary course of law. You have therefore, my lords, to elect between two constructions; one which makes an adequate provision for carrying the exception in the sixteenth section of the habeas corpus act into effect; and the other, a complete and radical repeal of that sacred security for the freedom of Englishmen.—But further, the spirit and the letter of the habeas corpus law is, that the party arrested shall, without a moment's delay, be bailed,

bailed, if the offence beailable; but if misdemeanors are within this act, then an English subject, arrested under an Irish warrant, cannot be bailed within any part of the realm of England, but must be carried forward, in the custody of Irish bailiffs, to the sea-shore of his country, where he is to be embarked in such vessel as they think proper; and, if it should be the good pleasure of his guardians to let him land alive in any part of Ireland, then, and not till then, may he apply to an Irish justice to admit him to bail in a foreign country, where he is a perfect stranger, and where none but an idiot could expect to find any man disposed to make himself responsible for his appearance. Can you, my lords, bring your minds easily to believe that such a tissue of despotism and folly could have been the sober and deliberate intention of the legislature? but further, under the acts of George II. even from one county to the next, the warrant by the first justice must be authenticated upon oath, before it can be endorsed by the second; but, in this act, between, perhaps, the remotest regions of different kingdoms, no authentication is required; and, upon the endorsement of, perhaps, a forged warrant, which the English justice has no means of enquiring into, a British subject is to be marched through England, and carried over sea to Ireland, there to learn in the county of Kerry, or Galway, or Derry, that he had been torn from his family, his friends, his business, to the annihilation of his credit, the ruin of his affairs, the destruction of his health, in consequence

sequence of a mistake, or a practical joke, or an inhuman or remorseless project of vindictive malice; and that he is then at liberty to return, if he is able; that he may have a good action at law against the worthy and responsible bailiff that abused him, if he is foolish enough to look for him, or unfortunate enough to find him. Can you, my lords, be brought seriously to believe, that such a construction would not be the foulest aspersion upon the wisdom and justice of the legislature?

I said, my lords, that an Englishman may be taken upon the endorsement of a forged warrant. Let me not be supposed such a simpleton as to think that the danger of forgery makes a shade of difference in the subject. I know too well that calendar of saints, the Irish justices; I am too much in the habit of prosecuting and defending them every term and every commission, not to be able to guess at what price a customer might have real warrants by the dozen; and, without much sagacity, we might calculate the average expense of their endorsement at the other side of the water.—But, further yet, the act provides that the expense of such transmission shall be paid at the end of the journey, by the place where the crime has been committed—but, who is to supply the expenses by the way? what sort of prosecutors do you think the more likely to advance those expenses, an angry minister, or a vindictive individual?—I can easily see that such a construction would give a most effectual method of getting rid of
a troublesome

a troublesome political opponent ; or a rival in trade ; or a rival in love ; or of quickening the undutiful lingering of an ancestor that felt not the maturity of his heir ; but I cannot bring myself to believe, that a sober legislature, when the common rights of humanity seem to be beaten into their last entrenchment, and to make their last stand, I trust in God a successful one, in the British empire, would choose exactly that awful crisis for destroying the most vital principles of common justice and liberty ; or of shewing to these nations, that their treasure and their blood were to be wasted in struggling for the noble privilege of holding the right of freedom, of habitation, and of country, at the courtesy of every little irritable officer of state, or of our worshipful Rivets, and Bells, and Medicots, and their trusty and well-beloved cousins and catchpoles.

But, my lords, even if the prosecutor should succeed, which, for the honour and character of Ireland, I trust he cannot, in wringing from the bench an admission that all offences whatsoever are within this act, he will have only commenced his honourable cause, he will only have arrived at the vestibule of atrocity. He has now to shew that Mr. Johnson is within the description of a malefactor, making his escape into Ireland, whereby his offence may remain unpunished, and liable to be arrested under a warrant endorsed in that place whither or where such person shall escape, go into, reside, or be. For this enquiry you
must

must refer to the twenty-third and twenty-fourth George II. The first of these, twenty-third, c. 11. recites the mischief—"that persons against whom warrants are granted *escape* into other counties, and thereby avoid being punished."—The enacting part then gives the remedy:—"the justice for the place into which *such* person shall have gone or escaped shall endorse the original warrant, and the person accused shall thereunder be sent to the justice who granted it, to be by him dealt with," &c.

If words can be plain, these words are so—they extend to persons actually committing crimes within a jurisdiction, and actually escaping into some other after warrant granted, and thereby avoiding trial.—In this act there were found two defects:—first, it did not comprehend persons changing their abode before warrant issued, and whose removing, as not being a direct flight from pursuit, could scarcely be called an escape;—secondly, it did not give the second justice a power to bail.—And here you see how essential to justice it was deemed, that the person arrested should be bailed on the spot and the moment of arrest, if the charge was bailable.

Accordingly, the twenty-fourth of George II. cap. 55. was made:—After reciting the former act, and the class of offenders thereby described, namely, actual offenders actually escaping, it recites that "whereas *such offenders* may reside
" or

“ or be in some other county before the warrant
 “ granted, and without escaping or going out of
 “ the county after such a warrant granted,” it
 then enacts, “ that the justice for such place
 “ where such person shall escape, go into, reside,
 “ or be, shall endorse, &c. and may bail if bail-
 “ able, or transmit,” &c.

Now the construction of these two acts taken together is manifestly this : it takes in every person, who being in any jurisdiction, and committing an offence therein, escaping after warrant, or without escaping after warrant, going into some other jurisdiction, and who shall there *reside*, that is, permanently abide, or *shall* be, that is permanently, so as to be called a resident.

Now here it is admitted that Mr. Johnson was not within the realm of England since the beginning of 1802, more than a year before the offence existed ; and therefore you are gravely called upon to say that he is the person who made his escape *from* a place where he never was, and into a place which he had never left.—To let in this wise and humane instruction, see what you are called upon to do:—the statute makes such persons liable to arrest if they shall have done certain things, to wit, if they shall escape, go into, reside, or be ; but if the fact of simply being, *i. e.* existing in another jurisdiction, is sufficient to make them so liable, it follows of course, that the two only verbs that imply doing any
 thing,

thing, that is *escape or go into* must be regarded as superfluous, that is, that the legislative had no idea whatsoever to be conveyed by them when they used them, and therefore are altogether expunged and rejected.

Such, my lords, are the strange and unnatural monsters that may be produced by the union of malignity and folly. I cannot but own that I feel an indignant, and perhaps ill-natured satisfaction in reflecting that my own country cannot monopolize the derision and detestation that such a production must attract. It was originally conceived by the wisdom of the east ; it has made its escape, and come into Ireland under the sanction of the first criminal judge of the empire: here, I trust in God, we shall have only to feel shame or anger at the insolence of the visit; without the melancholy aggravation of such an execrable guest continuing *to reside* or *to be* among us. On the contrary, I will not dismiss the cheering expectation from my heart, that your decision, my lords, will shew the British nation, that a country, having as just and as proud an idea of liberty as herself, is not an unworthy ally in the great contest for the rights of humanity ; is no unworthy associate in resisting the progress of barbarity and military despotism, and in defending against its enemies that great system of British freedom, in which we have now a common interest, and under the ruins of which, if it should be overthrown we must be buried in a common destruction.

I am

I am not ignorant, my lords, that this extraordinary construction has received the sanction of another court, nor of the surprise and dismay with which it smote upon the general heart of the bar. I am aware that I may have the mortification of being told in another country of that unhappy decision, and I foresee in what confusion I shall hang down my head when I am told it. But I cherish too the consolatory hope, that I shall be able to tell them that I had an old and learned friend, whom I would put above all the sweepings of their hall, who was of a different opinion; who had derived his ideas of civil liberty from the purest fountains of Athens and of Rome; who had fed the youthful vigour of his studious mind, with the theoretic knowledge of their wisest philosophers and statesmen; and who had refined the theory into the quick and exquisite sensibility of moral instinct, by contemplating the practice of their most illustrious examples; by dwelling on the sweet soul'd piety of Cimon; on the anticipated christianity of Socrates; on the gallant and pathetic patriotism of Epaminondas; on that pure austerity of Fabricius, whom to move from his integrity would have been more difficult than to have pushed the sun from his course. I would add, that if he had seemed to hesitate, it was but for a moment: that his hesitation was like the passing cloud that floats across the morning sun, and hides it from the view and does so for a moment hide it by involving the spectator without even approaching the face of the luminary:

And

And this soothing hope I draw from the dearest and tenderest recollections of my life, from the remembrance of those attic nights and those reflections of the gods which we have spent with those admired and respected and beloved companions who have gone before us ;—over whose ashes the most precious tears of Ireland have been shed: yes, my good lord, I see you do not forget them; I see their sacred forms passing in sad review before your memory; I see your pained and softened fancy recalling those happy meetings, when the innocent enjoyment of social mirth expanded into the nobler warmth of social virtue; and the horizon of the board became enlarged into the horizon of man;—when the swelling heart conceived and communicated the pure and generous purpose,—when my slenderer and younger taper imbibed its borrowed light from the more matured and redundant fountain of yours. Yes, my lord, we can remember those nights without any other regret than that they can never more return, for

“ We spent them not in toys, or lust, or wine ;

“ But search of deep philosophy,

“ Wit, eloquence and poesy,

“ Arts, which I lov'd, for they, my friend, were thine.”*

But, my lords, to return to a subject from which to have thus far departed, I think, may not be

* Lord Avonmore: the picture bore certainly a strong likeness to him. Those who know him perceive and acknowledge it.

wholly

wholly without excuse. The express object of the forty-fourth was to send persons *from* places where they were not triable by law, back to the places that had jurisdiction to try them. And in those very words does Mr. justice Blackstone observe on the thirteenth of the king, that it was made to prevent impunity by escape, by giving a power of “sending back” such offenders as had so escaped.

This topic of argument would now naturally claim its place in the present discussion. I mention it now, that it might not be supposed that I meant to pretermitt so important a consideration. And I only mention it, because it will connect itself with a subsequent head of this enquiry in a manner more forcibly applicable to the object, when I think I may venture to say, it will appear to demonstration, that if the offence charged upon the defendant is triable at all, it is triable in Ireland and no where else; and of course that the prosecutors are acting in direct violation of the statute, when they seek to transport him from a place where he can be tried, into another country that can have no possible jurisdiction over him.

Let us now, my lords, examine the next position contended for by those learned prosecutors. Having laboured to prove that the act applies not merely to capital crimes, but to all offences whatsoever; having laboured to shew that an act for preventing impunity by escape extends to cases

not only where there was no escape, but where escape in fact was physically impossible; they proceeded to put forward boldly a doctrine which no lawyer, I do not hesitate to say it, in Westminster-hall would have the folly or the temerity to advance; that is, that the defendant may by construction of law be guilty of the offence in Westminster, though he should never have passed within its limits till he was sent thither to be tried. With what a fatal and inexorable uniformity do the tempers and characters of men domineer over their actions and conduct! How clearly must an Englishman, if by chance there be any now listening to us, discern the motives and principles that dictated the odious persecutions of 1794 re-assuming their operations; forgetting that public spirit by which they were frustrated; unappalled by fear, undeterred by shame, and returning again to the charge; the same wild and impious nonsense of constructive criminality, the same execrable application of the ill-understood rules of a vulgar, clerk-like, and illiterate equity, to the sound and plain and guarded maxims of the criminal law of England! the purest, the noblest, the chastest system of distributive justice that was ever venerated by the wise, or perverted by the foolish, or that the children of men in any age or climate of the world have ever yet beheld; the same instruments, the same movements, the same artists, the same doctrines, the same doctors, the same servile and infuriate contempt of humanity, and persecution
of

of freedom! the same shadows of the varying hour that extend or contract their length, as the beam of a rising or sinking sun plays upon the gnomon of self-interest! How demonstratively does the same appetite for mice authenticate the identity of the transformed princess that had been once a cat.

But it seems as if the whole order and arrangement of the moral and the physical world had been contrived for the instruction of man, and to warn him that he is not immortal. In every age, in every country, do we see the natural rise, advancement, and decline of virtue and of science. So it has been in Greece, in Rome; so it must be, I fear, the fate of England. In science, the point of its maturity and manhood is the commencement of its old age; the race of writers, and thinkers, and reasoners passes away, and gives place to a succession of men that can neither write, nor think, nor reason. The Hales, the Holts, and the Somers shed a transient light upon mankind, but are soon extinct and disappear, and give place to a superficial and overweening generation of laborious and strenuous idlers,—of silly scholiasts, of wrangling mooters, of prosing garrulists, who explore their darkling ascent upon the steps of science, by the balustrade of cases and manuscripts, who calculate their depth by their darkness, and fancy they are profound because they feel they are perplexed. When the race of the Palladios is extinct, you may

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expect

expect to see a clumsy hod-man collected beneath the shade of his shoulders, ἀνὴρ ηὕεστε μεγαρῶτε ἐξοχος ἀνθρώπων κεφαλὴν καὶ εὐρέας ὤμους, affecting to fling a builder's glance upon the temple, on the proportion of its pillars; and to pass a critic's judgment on the doctrine that should be preached within them.

Let it not, my lords, be considered amiss, that I take this up rather as an English than an Irish question. It is not merely because we have no Habeas Corpus law in existence (the antiquarian may read of it, though we do not enjoy it); it is not merely because my mind refuses itself to the delusion of imaginary freedom, and shrinks from the meanness of affecting an indignant haughtiness of spirit that belongs not to our condition, that I am disposed to argue it as an English question; but it is because I am aware that we have now a community of interest and of destiny that we never had before—because I am aware, that blendid as we now are, the liberty of man must fall where it is highest, or rise where it is lowest, till it finds its common level in the common empire—and because, also, I wish that Englishmen may see, that we are conscious that nothing but mutual benevolence and sympathy can support the common interest that should bind us against the external or intestine foe; and that we are willing, whenever the common interest is attacked, to make an honest and animated resistance, as in a common cause, and with a cordial and tender anxiety for their safety as for our own.

Let

Let me now briefly, because no subject can be shorter or plainer, consider the principle of local jurisdictions, and constructive crimes :

A man is bound to obedience, and punishable for disobedience of laws:—first, because, by living within their jurisdiction, he avails himself of their protection; and this is no more than the reciprocity of protection and allegiance on a narrower scale—and secondly, because, by so living within their jurisdiction he has the means of knowing them, and cannot be excused because of his ignorance of them. I should be glad to know, upon the authority of what manuscript, of what pocket-case, the soundness of these principles can be disputed? I should be glad to know upon what known principle of English law, a Chinese, or a Laplander, can be kidnapped into England, and arraigned for a crime which he committed under the pole, to the injury of a country which he had never seen—in violation of a law which he had never known, and to which he could not owe obedience—and, perhaps, for an act, the non-performance of which might have forfeited his liberty or his life to the laws of that country which he was bound to know, and was bound to obey? Very differently did our ancestors think of that subject;—They thought it essential to justice, that the jurisdiction of criminal law should be local and defined—that no man should be triable but there, where he was accused of having actually committed the offence; where

where the character of the prosecutor, where his own character was known, as well as the characters of the witnesses produced against him ; and where he had the authority of legal process to enforce the attendance of witnesses for his defence. They were too simple to know any thing of the equity of criminal law. Poor Bracton or Fleta would have stared if you had asked them, "What, gentlemen, do you mean to say that such a crime as this shall escape from punishment!" Their answer would have been, no doubt, very simple and very foolish ; they would have said, "We know there are many actions that we think bad actions, which yet are not punishable, because not triable by law ; and that are not triable, because of the local limits of criminal jurisdictions." And, my lords, to shew with what a religious scrupulosity the locality of jurisdictions was observed, you have an instance in the most odious of all offences, treason only excepted—I mean the crime of wilful murder. By the common law, if a man in one county procured a murder to be committed which was afterwards actually committed in another, such procurer could not be tried in either jurisdiction, because the crime was not completed in either. This defect was remedied by the act of Edward VI. which made the author of the crime amenable to justice : But in what jurisdiction did it make him amenable? was it there where the murder was actually perpetrated? by no means, but there only where he had been guilty of the procurement,

ment, and where alone his accessorial offence was completed. And here you have the authority of parliament for this abstract position, that where a man living, in one jurisdiction does an act, in consequence of which a crime is committed within another jurisdiction, he is by law triable only where his own personal act of procurement was committed, and not there where the procured or projected crime actually took effect. In answer to these known authorities of common law, has any statute, has a single decision or even dictum of a court, been adduced? Or, in an age when the pastry-cooks and snuff-shops have been defrauded of their natural right to these compositions that may be useful without being read, has even a single manuscript been offered to shew the researches of these learned prosecutors, or to support their cause? No, my lords; there has not.

I said, my lords, that this was a fruit from the same tree that produced the stupid and wicked prosecutions of 1794: let me not be supposed to say it is a mere repetition of that attempt, without any additional aggravation. In 1794, the design, and odious enough it was, was confined to the doctrine of constructive guilt; but it did not venture upon the atrocious outrage of a substituted jurisdiction; the Englishman was tried on English ground, where he was known, where he could procure his witnesses, where he had lived, and where he was accused of a crime, whether
actual

actual or constructive; but the locality of the trial defeated the infernal malice of those prosecutions. The speeches of half the natural day, where every jury-man had his hour, were the knell of sleep, but they were not the knell of death. The project was exposed, and the destined victims were saved. A piece so damned could not safely be produced again on the same stage. It was thought wise, therefore, to let some little time pass, and then to let its author produce it on some distant provincial theatre for his own benefit, and at his own expense and hazard. To drag an English judge from his bench, or an English member of parliament from the senate, and in the open day, in the city of London, to strap him to the roof of a mail-coach, or pack him up in a waggon, or hand him over to an Irish bailiff, with a rope tied about his leg, to be goaded forward like an ox, on his way to Ireland, to be there tried for a constructive misdemeanor, would be an experiment, perhaps, not very safe to be attempted. These merlins, therefore, thought it prudent to change the scene of their sorcery;

modo Romæ, modo ponit Athenis!

The people of England might, perhaps, enter into the feelings of such an exhibition with an officiousness of sympathy, not altogether for the benefit of the contrivers—

Nec natos coram populo Medea trucidet—

and

and it was thought wise to try the second production before spectators whose necks were pliant, and whose hearts were broken; where every man who dared to refuse his worship to the golden calf, would have the furnace before his eyes, and think that it was at once useless and dangerous to speak, and discreet at least, if it was not honest, to be silent.—I cannot deny that it was prudent to try an experiment, that if successful, must reduce an Englishman to a state of slavery more abject and forlorn than that of the helots of Sparta, or the negroes of your plantations—for see, my lords, the extent of the construction now broadly and directly contended for at your bar:—The king's peace in Ireland, it seems, is distinct from his peace in England, and both are distinct from his peace in Scotland; and, of course, the same act may be a crime against each distinct peace, and severally and successively punishable in each country—so much more inveterate is the criminality of a constructive than an actual offence. So that the same man for the same act against all laws that he never heard of, may be punished in Ireland, be then sent to England by virtue of the warrant of Mr. justice Bell, endorsed by my lord Ellenborough, and after having his health, his hopes, and his property destroyed for his constructive offences against his majesty's peace in Ireland, and his majesty's peace in England, he may find that his majesty's peace in the Orkneys has after all, a vested remainder in his carcass; and, if it be the case of
a libel,

a libel, for the full time and term of fourteen years from the day of his conviction before the Scottish jurisdiction, to be fully compleated and determined. Is there, my lords, can there be a man who hears me, that does not feel that such a construction of such a law would put every individual in society under the despotical dominion, would reduce him to be the despicable chattel, of those most likely to abuse their power, the profligate of the higher, and the abandoned of the lower orders; to the remorseless malice of a vindictive minister, to the servile instrumentality of a trading justice?—Can any man who hears me conceive any possible case of abduction, of rape or of murder, that may not be perpetrated, under the construction now shamelessly put forward?—Let us suppose a case:—By this construction a person in England, by procuring a misdemeanor to be committed in Ireland, is constructively guilty in Ireland, and, of course, triable in Ireland—let us suppose that Mr. justice Bell receives, or says he receives information, that the lady of an English nobleman wrote a letter to an Irish chambermaid, counselling her to steal a row of pins from an Irish pedlar, and that the said row of pins was, in consequence of such advice and counsel, actually stolen, against the Irish peace of our lord the king; suppose my lord Ellenborough, knowing the signature, and reverencing the virtue of his tried and valued colleague, endorses this warrant; is it not clear as the sun that this English lady may, in the dead of night,

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be taken out of her bed, and surrendered to the mercy of two or three Irish bailiffs, if the captain that employed them should happen to be engaged in any contemporary adventure nearer to his heart, without the possibility of any legal authority interposing to save her, to be matronized in a journey by land, and a voyage by sea, by such modest and respectable guardians, to be dealt with during the journey as her companions might think proper—and to be dealt with afterward by the worshipful correspondent of the noble and learned lord, Mr. justice Bell, according to law?—I can without much difficulty, my lords, imagine, that after a year or two had been spent in accounts current, in drawing and redrawing for human flesh, between our worthy Bells and Medlicots on this side of the water, and their noble or their ignoble correspondents on the other, that they might meet to settle their accounts, and adjust their balances; I can conceive that the items might not be wholly destitute of curiosity:—Brother B. I take credit for the body of an English patriot.—Brother E. I set off against it that of an Irish judge.—Brother B. I charge you in account with three English bishops.—Brother E. I set off Mrs. M'Lean and two of her chickens; petticoat against petticoat.—Brother B. I have sent you the body of a most intractable disturber, a fellow that has had the impudence to give a threshing to Bonaparte himself; I have sent you Sir Sidney.—Dearest brother E.—But I see my learned opponents smile—

smile—I see their meaning.—I may be told, that I am putting imaginary and ludicrous, but not probable, and therefore, not supposable cases.—But I answer, that reasoning would be worthy only of a slave, and disgraceful to a freeman. I answer, that the condition and essence of rational freedom is, not that the subject probably will not be abused, but that no man in the state shall be clothed with any discretionary power, under the colour and pretext of which he can dare to abuse him. As to probability, I answer, that in the mind of man there is no more instigating temptation to the most remorseless oppression, than the rancour and malice of irritated pride and wounded vanity.—To the argument of improbability I adduce in answer, the very fact, the very question in debate; nor to such answer can I see the possibility of any reply, save that the prosecutors are so heartily sick of the point of view into which they have put themselves by their prosecution, that they are not likely again to make a similar experiment. But when I see any man fearless of power, because it possibly, or probably, may not be exercised upon him, I am astonished at his fortitude; I am astonished at the tranquil courage of any man who can quietly see that a loaded cannon is brought to bear upon him, and that a fool is sitting at its touch-hole with a lighted match in his hand. And yet, my lords, upon a little reflection, what is it, after what we have seen, that should surprise us, however it may shock us?—What have the last ten years
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of the world been employed in, but in destroying the land-marks of rights, and duties, and obligations; in substituting sounds in the place of sense; in substituting a vile and canting methodism in the place of social duty and practical honour; in suffering virtue to evaporate into phrase, and morality into hypocrisy and affectation?—We talk of the violations of Hamburg or of Baden; we talk of the despotical and remorseless barbarian who tramples on the common privileges of the human being; who, in defiance of the most known and sacred rights, issues the brutal mandate of usurped authority; who brings his victim by force within the limits of a jurisdiction to which he never owed obedience, and there butchers him for a constructive offence. Does it not seem as if it was a contest whether we should be more scurrilous in invective, or more atrocious in imitation? Into what a condition must we be sinking, when we have the front to select as the subjects of our obloquy, those very crimes which we have flung behind us in the race of profligate rivalry!

My lords, the learned counsel for the prosecutors have asserted, that this act of the forty-fourth of the king extends to all offences, no matter how long or previously to it they may have been committed.—The words are, “That from and after “the first day of August, 1804, if any person, &c. “shall escape, &c.”—Now, certainly nothing could be more convenient for the purpose of the prosecutors

prosecutors than to dismiss, as they have done, the words "escape and go into," altogether. If those words could have been saved from the ostracism of the prosecutors, they must have designated some act of the offenders, upon the happening or doing of which the operation of the statute might commence ; but the temporary bar of these words they wave by the equity of their own construction, and thereby make it a retrospective law ; and having so construed it a manifestly *ex post facto* law, they tell you it is no such thing, because it creates no new offence, and only makes the offender amenable who was not so before. The law professes to take effect only from and after the first of August 1804 :—Now, for eighteen months before that day, it is clear that Mr. Johnson could not be removed by any power existing from his country and his dwelling ; but the moment the act took effect, it is made to operate upon an alleged offence, committed, if at all, confessedly eighteen months before. But another word as to the assertion, that it is not *ex post facto*, because it creates no new crime, but only makes the party amenable. The force of that argument is precisely this :—If this act inflicted deportation on the defendant by way of punishment after his guilt had been established by conviction, that would, no doubt, be tyrannical, because *ex post facto* ; but here he suffers the deportation, while the law is bound to suppose him perfectly innocent ; and that only by way of process to
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make him amenable, not by way of punishment : and surely he cannot be so unreasonable as not to feel the force of the distinction. How naturally, too, we find similar outrages resort to similar justifications ! Such exactly was the defence of the forcible entry into Baden. Had that been a brutal violence committed in perpetration of the murder of the unfortunate victim, perhaps very scrupulous moralists might find something in it to disapprove ; but his imperial majesty was too delicately tender of the rights of individuals and of nations, to do any act so flagrant as that would be, if done in that point of view ; but his imperial majesty only introduced a clause of *ne omittas* into his warrant, whereby the worshipful Bells and Medlicots that executed it, were authorised to disregard any supposed phantastical privilege of nations that gave sanctuary to traitors ; and he did that from the purest motives ; from as disinterested a love of justice as that of the present prosecutors, and not at all in the way of an *ex post facto* law, but merely as process to bring him in, and make him amenable to the competent and unquestionable jurisdiction of the *bois de Boulogne*.—Such are the wretched sophistries to which men are obliged to have recourse, when their passions have led them to do what no thinking man can regard without horror, what they themselves cannot look at without shame ; and for which no legitimate reasoning can suggest either justification or excuse. Such
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are the principles of criminal justice, on which the first experiment is made in Ireland; but I venture to pledge myself to my fellow-subjects of Great Britain, that, if the experiment succeeds, they shall soon have the full benefit of that success. I venture to promise them, they shall soon have their full measure of this salutary system for making men “amenable,” heaped and running over into their bosoms.

There now remains, my lords, one, and only one topic of this odious subject, to call for observation. The offence here appears by the return and the affidavits to be a libel upon the Irish government, published by construction in Westminster. Of the constructive commission of a crime in one place by an agent, who, perhaps, at the moment of the act, is in another hemisphere, you have already enough:—Here, therefore, we will consider it simply as an alleged libel upon the Irish government; and whether, as such, it is a charge coming within the meaning of the statute, and for which a common justice of peace in one kingdom is empowered to grant a warrant for conveying the person accused for trial into the other. Your lordship will observe, that in the whole catalogue of crimes for which a justice of peace may grant a warrant, there is not one that imposes upon him the necessity of deciding upon any matter of law, involving the smallest doubt or difficulty whatsoever. In trea-
son.

son, the overt-act; in felony, whether capital or not, the act; in misdemeanors, the simple act. The dullest justice can understand what is a breach of the peace, and can describe it in his warrant. It is no more than the description of a fact which the informer has seen and sworn to. But no libel comes within such a class, for it is decided over and over, that a libel is no breach of the peace, and upon that ground it was that Mr. Wilkes, in 1763, was allowed the privilege of parliament, which privilege does not extend to any breach of the peace.

See then, my lords, what a task is imposed upon a justice of the peace, if he is to grant such a warrant upon such a charge: he no doubt may easily comprehend the allegation of the informer as to the fact of writing the supposed libel; in deciding whether the facts sworn amounted to a publication or not, I should have great apprehension of his fallibility; but if he got over those difficulties I should much fear for his competency to decide what given facts would amount to a constructive publication.—But even if he did solve that question, a point on which, if I were a justice, I should acknowledge myself most profoundly ignorant, he would then have to proceed to a labour in which I believe no man could expect him to succeed: that is, how far the paper sworn to was, in point of legal construction, libellous or not. I trust, this court will never be prevailed upon to sanction, by its decision, a

construction that would give to such a set of men a power so incompatible with every privilege of liberty, or of law. To say it would give an irresistible power of destroying the liberty of the press in Ireland would, I am aware, be but a silly argument, where such a thing has long ceased to exist; but I have for that very reason a double interest now, as a subject of the empire, in that noble guardian of liberty in the sister nation. When my own lamp is broken, I have a double interest in the preservation of my neighbour's. But if every man in England, who dares to observe, no matter how honestly and justly, upon the conduct of Irish ministers, is liable to be torn from his family, and dragged hither by an Irish bailiff, for a constructive libel against the Irish government, and upon the authority of an Irish warrant, no man can be such a fool as not to see the consequence. The inevitable consequence is this: that at this awful crisis, when the weal, not of this empire only, but of the whole civilized world, depends on the steady faith and consolidated efforts of these two countries—when Ireland is become the right arm of England—when every thing that draws the common interest and affection closer gives the hope of life—when every thing that has even a tendency to relax that sentiment is a symptom of death,—even at such a crisis may the rashness or folly of those entrusted with its management so act as to destroy its internal prosperity and repose, and lead it into the two-fold fatal error, of mistaking its natural enemies

enemies for its friends, and its natural friends for its natural enemies; without any man being found so romantically daring as to give notice of the approaching destruction.

My lords, I suppose the learned counsel will do here what they have done in the other court: they will assert, that this libel is not triable here; and they will argue, that so false and heinous a production surely ought to be triable somewhere. As to the first position, I say the law is directly against them. From a very early stage of the discussion, the gentlemen for the prosecution thought it wise for their clients to take a range into the facts much more at large than they appeared on the return to the writ, or even by the affidavits that have been made; and they have done this to take the opportunity of aggravating the guilt of the defendant, and at the same time of panegyrising their clients; they have therefore not argued upon the libel generally as a libel, but they have thought it prudent to appear perfectly acquainted with the charges which it contains:—they have therefore assumed, that it relates to the transactions of the twenty-third of July, 1803, and that the guilt of the defendant was, that he wrote that letter in Ireland, which was afterwards published in England; not by himself, but by some other persons. Now, on these facts, nothing can be clearer than that he is triable here. If it be a libel, and if he wrote it here, and it was published in England,

most manifestly there must have been a precedent publication, not merely by construction of law, in Ireland, but a publication by actual fact; and for this plain reason, if you for a moment suppose the libel in his possession (and if he did in fact write it. I can scarcely conceive that it was not, unless he wrote it perhaps by construction), there were no physical means of transmitting it to England that would not amount to a publication here; because, if he put it into the post-office, or gave it to a messenger to carry thither, that would be complete evidence of publication against him: so would the mere possession of the paper, in the hands of the witness who appeared and produced it, be perfect evidence, if not accounted for or contradicted, to charge him with the publication; so that really I am surprised how gentlemen could be betrayed into positions so utterly without foundation. They would have done just as usefully for their clients, if they had admitted, what every man knows to be the fact, that is, that they durst not bring the charge before an Irish jury. The facts of that period were too well understood. The Irish public might have looked at such a prosecution with the most incredulous detestation; and if they had been so indiscreet as to run the risk of coming before an Irish jury, instead of refuting the charges against them as a calumny, they would have exposed themselves to the peril of establishing the accusation, and of raising the character of the man whom they had the heart

to

to destroy, because he had dared to censure them. Let not the learned gentlemen, I pray, suppose me so ungracious as to say, that this publication, which has given so much pain to their clients, is actually true; I cannot personally know it to be so, nor do I say so, nor is this the place or the occasion to say that it is so. I mean only to speak positively to the question before you, which is matter of law. But as the gentlemen themselves thought it meet to pronounce an eulogy on their clients, I thought it rather unseemly not to shew that I attended to them: I have most respectfully done so; I do not contradict any praise of their virtues or their wisdom, and I only wish to add my very humble commendation of their prudence and discretion, in not bringing the trial of the present libel before a jury of this country.

The learned counsel have not been contented with abusing this libel as a production perfectly known to them; but they have wandered into the regions of fancy. No doubt the other judges, to whom those pathetic flights of forensic sensibility were addressed, must have been strongly affected by them. The learned gentlemen have supposed a variety of possible cases. They have supposed cases of the foulest calumniators aspersing the most virtuous ministers. Whether such supposed cases have been suggested by fancy, or by fact, it is not for me to decide; but
I beg

beg leave to say, that it is as allowable to us as to them to put cases of supposition—

—*Cur ego si fingere pauca
Possum, invidear?*

Let me then, my lords, put an imaginary case of a different kind:—Let me suppose that a great personage, entrusted with the safety of the citadel (meaning and wishing perhaps well, but misled by those lacquered vermin that swarm in every great hall), leaves it so loosely guarded, that nothing but the gracious interposition of Providence has saved it from the enemy. Let me suppose another great personage going out of his natural department, and under the supposed authority of high station, disseminating such doctrines as tend to root up the foundation of society—to destroy all confidence between man and man—and to impress the great body of the people with a delusive and desperate opinion, that their religion could dissolve or condemn the sacred obligations that binds them to their country—that their rulers have no reliance upon their faith, and are resolved to shut the gates of mercy against them.

Suppose a good and virtuous man saw, that such doctrines must necessarily torture the nation into such madness and despair, as to render them unfit for any system of mild or moderate government ;

government; that, if on one side, bigotry or folly shall inject their veins with fire, such a fever must be kindled as can be allayed only by keeping a stream of blood perpetually running from the other, and that the horrors of martial law must become the direful but inevitable consequence. In such a case let me ask you what would be his indispensable duty?—it would be, to avert such dreadful dangers, by exposing the conduct of such persons; by holding up the folly of such bigoted and blind enthusiasm to condign derision and contempt; and painfully would he feel that on such an occasion he must dismiss all forms and ceremonies; and that to do his duty with effect, he must do it without mercy. He should also foresee, that a person so acting, when he returned to those to whom he was responsible, would endeavour to justify himself by defaming the country which he had abused—for calumny is the natural defence of the oppressor: he should, therefore, so reduce his personal credit to its just standard, that his assertions might find no more belief than they deserved. Were such a person to be looked on as a mere private individual, charity and good-nature might suggest not a little in his excuse. An inexperienced man, new to the world, and in the honeymoon of preferment, would run no small risk of having his head turned in Ireland. The people in our island are by nature penetrating, sagacious, artful and comic—‘*natio comæda est.*’ In no country under heaven would an ass be more likely

likely to be hood-winked, by having his ears drawn over his eyes, and acquire that phantastical alacrity that makes dullness disposable to the purposes of humorous malice, or interested imposture. In Ireland, a new great man could get the freedom of a science as easily as of a corporation, and become a doctor, by construction of the whole Encyclopædia; and great allowance might be made under such circumstances for indiscretions and mistakes, as long as they related only to himself; but the moment they become public mischiefs, they lose all pretensions to excuse—the very ambition of incapacity is a crime not to be forgiven; and however painful it may be to inflict, it must be remembered, that mercy to the delinquent would be treason to the public.

I can the more easily understand the painfulness of the conflict between charity and duty, because at this moment I am labouring under it myself; and I feel it the more acutely, because I am confident, that the paroxysms of passion that have produced these public discussions have been bitterly repented of. I think, also, that I should not act fairly if I did not acquit my learned opponents of all share whatsoever in this prosecution—they have too much good sense to have advised it; on the contrary, I can easily suppose Mr. Attorney-general sent for to give counsel and comfort to his patient; and after hearing no very concise detail of his griefs, his resentments and his misgivings,

misgivings, methinks I hear the answer that he gives, after a pause of sympathy and reflection : —“ No, sir, don't proceed in such a business ; you'll only expose yourself to scorn in one country, and to detestation in the other. You know you durst not try him here, where the whole kingdom would be his witness. If you should attempt to try him there, where he can have no witness, you will have both countries upon your back. An English jury would never find him guilty. You will only confirm the charge against yourself ; and be the victim of an impotent, abortive malice. If you should have any ulterior project against him, you will defeat that also ; for those that might otherwise concur in the design, will be shocked and ashamed of the violence and folly of such a tyrannical proceeding, and will make a merit of protecting him, and of leaving you in the lurch.—What you say of your own feelings, I can easily conceive.—You think you have been much exposed by those letters ; but then remember, my dear sir, that a man can claim the privilege of being made ridiculous or hateful by no publications but his own. Vindictive critics have their rights, as well as bad authors. The thing is bad enough at best ; but, if you go on, you will make it worse—it will be considered an attempt to degrade the Irish bench and the Irish bar—you are not aware what a nest of hornets you are disturbing.—One inevitable consequence you don't foresee—you will certainly create the very thing in Ireland, that you are so afraid of, a newspaper ;

paper;—think of that, and keep yourself quiet.—And, in the mean time, console yourself with reflecting, that no man is laughed at for a long time;—every day will procure some new ridicule that must supersede him.”—such, I am satisfied, was the counsel given; but I have no apprehension for my client, because it was not taken. Even if it should be his fate to be surrendered to his keepers—to be torn from his family—to have his obsequies performed by torch light—to be carried to a foreign land, and to a strange tribunal, where no witness can attest his innocence, where no voice that he ever heard can be raised in his defence, where he must stand mute, not of his own malice, but the malice of his enemies—yes, even so, I see nothing for him to fear—that all gracious Being, that shields the feeble from the oppressor, will fill his heart with hope, and confidence, and courage; his sufferings will be his armour, and his weakness will be his strength: he will find himself in the hands of a brave, a just, and a generous nation—he will find that the bright examples of her Russels and her Sidneys have not been lost to her children; they will behold him with sympathy and respect, and his persecutors with shame and abhorrence; they will feel, too, that what is then his situation, may to-morrow be their own—but their first tear will be shed for him, and the second only for themselves—their hearts will melt in his acquittal; they will convey him kindly and fondly to their shore; and he will return in triumph to his country; to the threshold of his
sacred

sacred home, and to the weeping welcome of his delighted family; he will find that the darkness of a dreary and a lingering night hath at length passed away, and that joy cometh in the morning.—No, my lords, I have no fear for the ultimate safety of my client. Even in these very acts of brutal violence that have been committed against him, do I hail the flattering hope of final advantage to him, but of better days and more prosperous fortune for this afflicted country—that country of which I have so often abandoned all hope, and which I have been so often determined to quit for ever.

*Scepe vale dicto multa sum deinde locutus,
Et quasi discedens oscula summa dabam,
Indulgens animo, pes tardus erat.*

But I am reclaimed from that infidel despair—I am satisfied that while a man is suffered to live, it is an intimation from Providence that he has some duty to discharge, which it is mean and criminal to decline: had I been guilty of that ignominious flight, and gone to pine in the obscurity of some distant retreat, even in that grave I should have been haunted by those passions by which my life had been agitated—

Quæ cura vivos, eadem sequitur tellure repostos.

And if the transactions of this day had reached me, I feel, how my heart would have been agonized by the shame of the desertion, nor would my sufferings have been mitigated by a sense of the feebleness of that aid, or the smallness of that service

vice

vice which I could render or withdraw. They would have been aggravated by the consciousness that, however feeble or worthless they were, I should not have dared to thieve them from my country.—I have repented—I have staid—and I am at once rebuked and rewarded by the happier hopes that I now entertain.—In the anxious sympathy of the public—in the anxious sympathy of my learned brethren, do I catch the happy pre-sage of a brighter fate for Ireland. They see, that within these sacred walls, the cause of liberty and of man may be pleaded with boldness and heard with favour. I am satisfied they will never forget the great trust, of which they alone are now the remaining depositaries. While they continue to cultivate a sound and literate philosophy—a mild and tolerating christianity—and to make both the sources of a just, and liberal, and constitutional jurisprudence, I see every thing for us to hope. Into their hands therefore, with the most affectionate confidence in their virtue, do I commit these precious hopes. Even I may live long enough yet to see the approaching completion, if not in the perfect accomplishment of them. Pleased shall I then resign the scene to fitter actors—pleased shall I lay down my wearied head to rest, and say “Lord, now lettest thou thy servant depart in peace, according to thy word, for mine eyes have seen their salvation.”

COURT OF ROLLS.

M E R R Y,

VERSUS

RT. REV. DOCTOR JOHN POWER,

R. C. BISHOP OF WATERFORD.

THE FACTS ARE AS FOLLOW:

IN 1804, Mary Power made her will, bequeathing a considerable part of her property to the Rev. John Power, and others in trust for charitable purposes. Her brother Joseph, then a merchant in Spain, was her next of kin, and residuary legatee: he died intestate, and his son, the now plaintiff, came over and took out administration to his deceased father, and brought a suit in the spiritual court, to set aside the will, as unduly obtained, and as disposing of a large property to papists, and for superstitious uses. In that court the plaintiff applied for an administrator, *pendente lite*, and was refused. The present bill was filed, praying that the effects might be brought into court. This bill was filed only a few weeks; and now, before the defendant had answered, a motion was made by doctor Vavasour,

sour, for a receiver, and that doctor Power, the acting executor, should be ordered forthwith to bring the effects into court; he relied on the affidavit of his client, the plaintiff, charging that the will was obtained by fraud by the defendant Power, and that at best it could not be sustained, as being a trust altogether for *popish uses*. The motion was opposed by Mr. Prendergast, who strongly argued against the imputations thrown out upon the conduct of doctor Power, by the name of this “*one John Power, a popish priest.*” He insisted that under the whole circumstances there was no colour for impeaching the transaction; that the bequests were most praise-worthy; that there had already been a decree of this court obtained by the trustees of charitable donations, affirming the legality of the trusts, and that it would be unprecedented for a court to interfere in this way, and before an answer came in; or any delay or resistance, on the part of the defendant, to put in his answer. Other gentlemen, on both sides, argued very zealously for their clients.

His honour (Mr. Curran) said, that if the question had been brought forward upon the mere rule of the court, he should not have thought it necessary to give many reasons for the order he intended to make, but pressed so strongly as it has been, both by the arguments themselves, and perhaps more so by the style and manner of putting them, as well as the supposed policy which has been called in to aid them:

“I think,”

“ I think,” said his honour, “ I ought to state the grounds upon which I mean to act in my decision. First, then, it is urged, that this is the case of an insolvent and wasting executor, having fraudulently obtained the will. As to insolvency—to be an executor it is not necessary to be rich; integrity and discretion are the essential qualities of an executor. If the testator thinks he has found these in an executor of humble means, this court has no power to control him; he may bestow his property as a gift to whom he pleases. It would be strange if he could not confide it as a trust to whom he chooses; I know of no necessary connexion between wealth and honesty;—I fear that integrity is not always found to be the parent or offspring of riches. To interfere, therefore, as is now sought, with this executor, would be little short of removing the will. But it is said this will has been obtained by fraud, practised by this “ *one John Power.*” No doubt this court has acted, where strong ground of suspicion of fraud, and danger of the property being made away with, have appeared; but, do these grounds now appear to this court?

Here his honour recapitulated the facts sworn to, and said:

“ I see no semblance of fact to sustain such a charge. Who does this “ *one John Power, a popish priest,*” turn out to be?—I find he is a catholic clergyman—a doctor in divinity, and the titular bishop in the diocese of Waterford. And yet I am now pressed to believe that this gentleman

gentleman has obtained this will by fraud. Every fact now appearing repels the charge; I cannot but say that the personal character of the person accused, repels it still more strongly. Can I be brought, on grounds like those now before me, to believe, that a man, having the education of a scholar, the habits of a religious life, and vested with so high a character in the ministry of the gospel, could be capable of so detestable a profanation as is flung upon him?—Can I forget that he is a christian bishop, clothed not in the mere authority of a sect, but clothed in the indelible character of the episcopal order—suffering no dimunition from his supposed heterodoxy, nor drawing any increase or confirmation from the merits of his conformity, should he think proper to renounce what we call the errors of faith?—Can I bring my mind on slight, or rather on no grounds, to believe, that he could so trample under his feet all the impressions of that education, of those habits, and of that high rank in the sacred ministry of the gospel which he holds as to sink to the odious impiety imputed to him?—Can I bring myself to believe such a man, at the dying bed of his fellow-creature, would be capable with one hand of presenting the cross before her lifted eye, and with the other, of basely thieving from her those miserable dregs of this world, of which his perfidious tongue was employed in teaching her a christian's estimate?—I do not believe it; on the contrary, I am (as far as it belongs to me in this interlocutory way, to judge of the fact) as perfectly convinced that the
conduct

conduct of doctor Power was what it ought to be, as I am that the testatrix is dead.

“ But,” said his honour, “ I am called on to interfere, *it being a foolish bequest to superstitious, and those popish, uses!* I have looked into those bequests—I find the object of them is to provide shelter and comfortable support for poor helpless females; and clothes, and food, and instruction for poor orphan children. Would to God I could see more frequent instances of such bequests! Beautiful in the sight of God must it be—beautiful in the sight of man ought it be, to see the dying christian so employed—to see the last moments of human life so spent in acts of gratuitous benevolence, or even of interested expiation.—How can we behold such acts, without regarding them as forming a claim to, as springing from a consciousness of immortality? In all ages the hour of death has been considered as an interval of more than ordinary illumination; as if some rays from the light of the approaching world had found their way to the darkness of the parting spirit, and revealed to it an existence that could not terminate in the grave, but was to commence in death.

But these uses are condemned, as being not only superstitious but popish uses. As to that, I must say that I feel no disposition to give any assistance even to the orthodox rapine of the living, in defeating even the heterodox charity of

the dead. I am aware that this objection means somewhat more than directly meets the ear, if it means any thing. The objects of these bequests, it seems, are catholics, or, as they have been called, *papists*; and the insinuation clearly is, that the religion of the objects of this woman's bounty calls upon me to exercise some peculiar rigour of interference to abridge or defeat her intentions. Upon this point I wish to be distinctly understood; I don't conceive this to be the spirit of our existing law; nor, of course, the duty of this court to act upon that principle in the way contended for. In times, thank God, now past, the laws would have warranted such doctrines. *Those laws owed their existence to unfortunate combinations of circumstances that were thought to render them necessary. But if we look back with sorrow to their enactment, let us look forward with kindness and gratitude to their repeal. Produced by national calamity, they were brought by national benevolence, as well as by national contrition, to the altar of public justice and concord, and there offered as a sacrifice to atone, to heal, to conciliate, to restore social confidence, and to give us that hope of prosperity and safety, which no people ever had, or deserved, or dared to have, except where it is founded on the community of interests, a perfectly even and equal participation of just rights, and a consequent contribution of all the strength—of all the parts so equally interested in the defence of the whole.*

“ I know

“ I know they have been supposed to originate in religious bigotry—that is religious zeal carried to excess—I never thought so. The real spirit of our holy religion is too incorruptibly pure and beneficent to be depraved into any such excess. Analyse the bigot’s object, and we see he takes nothing from religion but a flimsy pretext in the profanation of its name; he professes the correction of error and the propagation of truth. But when he has gained the victory, what are the terms he makes for himself? Power and profit. What terms does he make for religion? Profession and conformity—What is that profession? the mere utterance of the lips—the utterance of sounds, that after a pulsation or two upon the air, are just as visible and lasting as they are audible. What is the conformity? Is it the practice of any social virtue or christian duty? Is it the forgiveness of injuries, or the payment of debts, or the practice of charity? No such things. It is the performance of some bodily gesture or attitude. It is going to some place of worship. It is to stand or to kneel, or to bow to the poor-box, but it is not a conformity that has any thing to do with the judgment, or the heart, or the conduct. All these things bigotry meddles not with, but leaves them to religion herself to perform. Bigotry only adds one more, and that a very odious one, to the number of those human stains which it is the business of true religion not to burn out with the bigot’s fire, but to expunge and wash away by the christian’s

christian's tears—Such invariably, in all the countries and ages, have been the motives to the bigot's conflicts, and such the use of his victories : Not the propagation of any opinion, but the engrossment of power and plunder—of homage and tribute. Such, I much fear, was the real origin of our popery laws.—But power and privilege must necessarily be confined to very few. In hostile armies you find them pretty equal, the victors and the vanquished, in the numbers of their hospitals and in the numbers of their dead ; so it is with nations ; the great mass is despoiled and degraded, but the spoil itself is confined to few indeed. The result finally can be nothing but the disease of dropsy and decrepitude. In Ireland this was peculiarly the case. Religion was dishonoured, man was degraded, and social affection was almost extinguished. *A few, a very few* still profited by this abasement of humanity. But let it be remembered, with a just feeling of grateful respect to their patriotic and disinterested virtue, and it is for this purpose that I have alluded as I have done, that *that* few composed the whole power of the legislature which concurred in the repeal of that system, and left remaining of it, not an edifice to be demolished, but a mere heap of rubbish, unsightly, perhaps pernicious—to be carted away.

“ If the repeal of those laws had been a mere abjuration of intolerance, I should have given it little credit. The growing knowledge of the world,

world, particularly of the sister nation, had disclosed and unmasked intolerance; had put it to shame, and consequently to flight!—*But though public opinion may proscribe intolerance, it cannot take away powers or privileges established by law.* Those powers of exclusion and monopoly could be given up only by the generous relinquishment of those who possessed them. And nobly were they so relinquished by those repealing statutes. Those lovers of their country saw the public necessity of the sacrifice, and most disinterestedly did they make it. If too, they have been singular in this virtue, they have been as singularly fortunate in their reward. In general, the legislator, though he sows the seed of public good, is himself numbered with the dead before the harvest can be gathered. With us it has not been so—with us the public benefactors, many of them at least, have lived to see the blessing of heaven upon their virtue, in an uniformly accelerating progress of industry and comfort, and liberality, and social affection, and common interest, such as I do not believe that any age or nation has ever witnessed.

“Such I do know was the view, and such the hope with which that legislature, *now no more!* proceeded so far as they went, in the repeal of those laws so repealed. And well do I know how warmly it is now remembered by every thinking catholic, that not a single voice for those repeals was or could be given except by a protestant

tant legislator. *With infinite pleasure do I also know and feel that the same sense of justice and goodwill which then produced the repeal of those laws, is continuing to act, and with increasing energy, upon those persons in both countries, whose worth and whose wisdom are likely to explode whatever principle is dictated by bigotry and folly; and to give currency and action to whatever principle is wise and salutary. Such, also, I know to be the feelings of every court in this hall. It is from this enlarged and humanized spirit of legislation that courts of justice ought to take their principles of expounding the law.*

“ At another time I should probably have deemed it right to preserve a more respectful distance from some subjects which I have presumed (but certainly with the best intentions, and I hope, no unbecoming freedom) to approach:—But I see the interest the question has excited; and I think it right to let no person carry away with him any mistake, as to the grounds of my decision, *or suppose that it is either the duty or the disposition of our courts to make any harsh or jealous distinctions in their judgment, founded on any differences of religious sects or tenets.* I think therefore, the motion ought to be refused; and I think myself bound to mark still more strongly my sense of its impropriety, by refusing it with full costs.

FINIS.

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